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Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Report of the Secretary-General

Summary

In its resolution 1745 (LIV) of 16 May 1973, the Economic and Social Council invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. In its resolution 1995/57 of 28 July 1995, the Council recommended that the quinquennial reports of the Secretary-General, like the report submitted to the Council in 1995, should continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty and requested the Secretary-General, in preparing the sixth quinquennial report, to draw on all available data, including current criminological research. The present, sixth quinquennial report contains a review of the trends in the application of the death penalty, including the implementation of the safeguards, during the period 1994-2000. It is a revised, updated version of the report of the Secretary-General on the subject (E/2000/3) that was submitted to the Council at its substantive session of 2000, to the Commission on Crime Prevention and Criminal Justice at its ninth session and to the Commission on Human Rights at its fifty-sixth session. Sixty-three countries participated in the survey. There was again a relatively poor response from retentionist countries, especially those making the most use of capital punishment. One major conclusion to be drawn is that, since 1994, the rate at which countries have embraced abolition has remained unchanged. Yet, given that fewer newly democratic States have come into existence in the latter period and that there is a smaller pool of retentionist countries and territories, which may be assumed to be more resistant to change, the continued movement towards abolition throughout the world has been impressive.

* E/CN.15/2001/1.

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I. Introduction

1. The present report is a revised, updated version of the sixth quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2000/3), covering the period 1994-1998.[1] It was prepared in pursuance of Economic and Social Council resolutions 1745 (LIV) of 16 May 1973 and 1995/57 of 28 July 1995.

2. The sixth quinquennial report (E/2000/3) was submitted to the Commission on Crime Prevention and Criminal Justice at its ninth session, in accordance with Economic and Social Council resolutions 1745 (LIV) and 1990/51 of 24 July 1990. At that session, it was proposed that the report be considered by the Commission at its tenth session. The report of the Secretary-General reflected information received from 45 Governments. The present, updated and revised report includes information from an additional 18 Governments, or a total of 63 Governments. In pursuance of Council resolution 1995/57, the report was also submitted to the Commission on Human Rights at its fifty-sixth session. In its resolution 2000/65 of 26 April 2000, the Commission on Human Rights welcomed the report and called upon all States that still maintained the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty.

3. To facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the application of the death penalty and the implementation of the safeguards, a number of steps were taken. Under the auspices of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat, a questionnaire was designed and the sixth survey was conducted on the two issues combined. In a note verbale dated 6 December 1999, the Secretary-General invited Governments to provide the requisite basic information in that regard. In an official communication dated 24 February 2000, the Secretary-General also invited the comments of relevant intergovernmental organizations, non-governmental organizations, United Nations entities and the institutes constituting the United Nations Crime Prevention and Criminal Justice Programme network. At the ninth session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, held in Vienna from 5 to 16 June 2000, Member States were urged by the Secretariat to cooperate in the survey endeavour with a view to improving the response rate.[2]

4. In its resolution 1745 (LIV), the Economic and Social Council invited the Secretary-General to submit to it periodic updated and analytical reports on the question of capital punishment at five-year intervals starting from 1975. The first quinquennial report, submitted by the Secretary-General in 1975, covered the period 1969-1973 (E/5616 and Add.1 and Corr.1 and 2). The second quinquennial report, prepared in 1980 and covering the period 1974-1978 (E/1980/9 and Corr.1 and 2, Add.1 and Corr.1 and Add.2 and 3), was also submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in accordance with Economic and Social Council decision 1980/142 of 2 May 1980. The third quinquennial report (E/1985/43 and Corr.1), covering the period 1979-1983, was considered by the Council in 1985 and by the Seventh United Nations Congress. The fourth quinquennial report (E/1990/38/Rev.1 and Corr.1 and Add.1), covering the period 1984-1988, was considered by the Council at its first and second regular sessions of 1990 and by the Eighth United Nations Congress.

4. In pursuance of section X of Council resolution 1986/10 of 21 May 1986, the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). In that report, which was based on replies from 74 countries, it was noted that the review justified the concern expressed by the Human Rights Committee that inadequate progress had been made towards abolishing or limiting the application of the death penalty. In its resolution 1989/64 of 24 May 1989, the Economic and Social Council recommended that quinquennial reports on capital punishment should henceforth cover the implementation of the safeguards as well as the use of capital punishment.

6. The fifth quinquennial report, covering the period 1989-1993, was therefore the first such report to deal not only with the question of capital punishment but also the question of the implementation of the

safeguards guaranteeing protection of the rights of those facing the death penalty (E/1995/78 and Add.1 and Corr.1). The report was considered by the Economic and Social Council at its substantive session of 1995 and a revised version of the report (E/CN.15/1996/19), which included 12 replies from Governments that had not been available previously, was considered by the Commission on Crime Prevention and Criminal Justice at its fifth session.

7. In its resolutions 1745 (LIV), 1990/51 and 1995/57, the Economic and Social Council invited Member States to provide the Secretary-General with the information requested in order to facilitate his efforts to gather comprehensive, timely and accurate information about the implementation of the safeguards and on the use of and trends in capital punishment during the period 1994-1998. In the preparation of the report and in accordance with the request of the Council, the Secretary-General was to draw on all available data, including current criminological research, and to invite the comments of specialized agencies, intergovernmental organizations and non-governmental organizations in consultative status with the Council. The network of associate and affiliate institutes was also contacted in that regard.

8. The sixth quinquennial survey provided a technical analysis of the responses of Governments to the survey. It also made comparisons over time with reference to the previous quinquennial reports of the Secretary-General and to all available supplementary data. Reference is made to the work of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions and to the annual, supplementary reports submitted to the Commission on Human Rights in 1998 and 1999 (E/CN.4/1998/82 and Corr.1 and E/CN.4/1999/52 and Corr.1 and Add.1). However, at the time of preparation of that report, replies had been received from only 45 Governments, a disappointing response. Since then a further 18 replies have been received by the Secretary-General. The revision of the report on the sixth quinquennial survey has made it possible to take into account these replies and further information from other sources. It is now possible to provide information on the number of countries that had either abolished or still retained the death penalty by the end of 2000 and to provide more information on the number of executions (until the end of 1999) and on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.

II. Background and scope

9. All States were invited to participate in the sixth quinquennial report on the use and application of the death penalty, including in arbitrary and summary executions, by means of a detailed methodological instrument, a questionnaire designed by the Centre for International Crime Prevention. It was a unique and innovative instrument. For the first time, question items were framed separately for abolitionist countries for countries that did not impose the death penalty for ordinary offences or de facto abolitionist countries and for retentionist countries. They included references both to the use of capital punishment and to the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. While maintaining breakdowns by age and gender, the sixth survey addressed issues of race, ethnicity, religion and political affiliation. The instrument further advanced the system of classification established in the quinquennial surveys and reports and interim, supplementary reports. All States were asked about the following: the extent to which they kept abreast of the international debate on the death penalty and developments in other countries and in the United Nations; research, information and public awareness concerning the use of the death penalty; and the extent to which they provided, or required, technical cooperation on issues relating to capital punishment. Information was specifically requested by gender and age, and, for the first time, on the ethnic origin and religious affiliation of persons sentenced to death or executed in countries that had retained the death penalty.

10. By the end of 2000, 63 countries and areas had participated in the sixth quinquennial survey, either completing the survey instrument or providing other forms of information. Many States completed the questionnaire in full, while some did not provide answers to all items of the questionnaire relevant to their own national situation. For example, some responding retentionist States left completely blank the section requesting a return of the numbers sentenced to death and executed in each of the five years of the quinquennium and/or did not respond to all the

questions relating to the safeguards guaranteeing protection of the rights of those facing the death penalty.

11. Of the 63 countries and areas from which some kind of information was received, 20 were in western Europe and other States (Australia, Austria, Belgium, Cyprus, Denmark, Finland, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Malta, New Zealand, Norway, Spain, Sweden, Switzerland, Turkey and United Kingdom of Great Britain and Northern Ireland), 13 were in eastern Europe (Armenia, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Kazakhstan, Lithuania, Poland, Slovakia, Slovenia and the former Yugoslav Republic of Macedonia), 9 were from Africa (one was from northern Africa (Morocco) and 8 were from sub-Saharan Africa (Cameroon, Comoros, Djibouti, Eritrea,[3] Mozambique, Niger, Rwanda and Togo), 11 were from Latin America and the Caribbean (Antigua and Barbuda, Argentina, Barbados, Brazil, Chile, Colombia, Ecuador, El Salvador, Mexico, Peru and Uruguay), 3 were from the Middle East (Bahrain, Iraq and Lebanon), 5 were from Asia and the Pacific (Fiji, Indonesia, Japan, Myanmar and Thailand) and 2 were from North America (Canada and United States of America). The Government of the United States did not complete the questionnaire but submitted a letter explaining its position on the death penalty, supported by an article from an academic journal[4] and the annual statistics on capital punishment published in the *Bureau of Justice Statistics Bulletin*, for the period 1994-1998. Information was also received from the Council of Europe, the International Committee of the Red Cross, the Inter-Parliamentary Union, Amnesty International and the Organization of American States (see paras. 74, 77 and 78 below).

12. It has been standard practice in all of the quinquennial surveys and annual reports over the past 25 years to classify States according to their use and application of capital punishment, that is, whether States do or do not retain the death penalty and, if they do, whether or not it has been enforced within the preceding 10 years. The categories used are as follows:

(a) *Abolitionist for all crimes, whether in peacetime or in wartime*;

(b) *Abolitionist for ordinary crimes*. This means that the death penalty has been abolished for all ordinary offences committed in time of peace, such as those contained in the national criminal code or those which are recognized in common law (e.g. for murder, rape and robbery with violence), but executions have taken place within the past 10 years (for possession of illicit drugs for sale etc.); in such countries, the death penalty is retained only for exceptional circumstances, such as those which may apply in time of war for military offences, or for crimes against the State, such as treason or armed insurrection;

(c) *De facto abolitionist (retentionist but abolitionist in practice)*. This means that, while the death penalty is retained in the statutes and death sentences may continue to be imposed, executions have not taken place for a long time—10 years at least; it does not mean, however, that executions cannot resume—in the present report, such States have been classified as retentionist, under a separate category;

(d) *Retentionist*. This means that death sentences have been imposed and executions have taken place within the past 10 years.

There have been cases, such as in the annual, supplementary reports submitted to the Commission on Human Rights, where the first two categories have been amalgamated into a single "abolitionist" category. For the sake of continuity with the previous five quinquennial surveys, the above-mentioned categories have been maintained and no such amalgamation has been made.

13. It was the practice in the first four quinquennial reports to begin by indicating the status of the death penalty in the countries that had replied at the end, rather than at the beginning, of the quinquennium. Of the 49 States that responded to the first survey on capital punishment (covering the period 1969-1973), 23 were abolitionist and 26 were retentionist. Of the 74 States responding to the second survey (covering the period 1974-1978), 26 were abolitionist (16 for all crimes and 10 for ordinary crimes), 47 were retentionist and 1 was divided on the issue (i.e. it had the death penalty in some jurisdictions but not others). The third survey (1979-1983) elicited 64 responses, 25 from abolitionist States (20 for all crimes and 5 for ordinary crimes) and 39 from retentionist States. Fifty-five States responded to the fourth survey (1984-1988): 32 were abolitionist (26 for all crimes and 6 for ordinary crimes) and 23 retentionist, of which 5 could be de facto abolitionist (having had no executions for 10 or more years). A further 34 countries provided information on their death penalty status when

responding in 1988 to the United Nations survey on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Thus, 89 countries responded to one or other of those surveys.

14. The fifth survey, covering the period 1989-1993, at first yielded responses relating to 57 countries, although subsequently the number increased to 69; 66 were from governmental sources and 3 from non-governmental organizations. At that time, 43 of the countries and territories mentioned were abolitionist (32 for all crimes, including 5 countries that had emerged as new States during the quinquennium, and 11 for ordinary crimes), while 26 (including 4 new States) were retentionist. Nine of these (including one new State) were considered de facto abolitionist.

15. Sixty-three Governments participated in the sixth survey, a number comparable to the fifth survey. Almost two thirds (41) of those countries were totally abolitionist (34) or abolitionist for all ordinary crimes (7). Approximately 14 per cent (9 countries) were de facto abolitionist and 21 per cent were retentionist (13 countries).

16. Of the 87 countries that had abolished the death penalty completely or for ordinary crimes by the end of the year 2000 (see table 1, sects. A and B), 41, just under half (47 per cent) replied to the sixth survey. It may be that a number of those which failed to reply considered the sixth survey as not relevant to their circumstances because they had been abolitionist for such a long time. Indeed, a few communicated this to the Secretary-General. Moreover, 26 countries had recently—in 1998 or 1999—sent information on law and practice relating to the death penalty for the annual, supplementary reports submitted to the Commission on Human Rights. Eleven of those countries did not respond to the sixth survey. It may be that annual requests for information have led some Governments to believe that if they have recently provided information, they do not need to do so again so soon afterwards. This is to be regretted because the quinquennial reports seek a much wider range of, and more detailed, information than that sought by the Secretary-General for his annual report to the Commission on Human Rights.

17. In the first three quinquennial surveys, the proportion of retentionist countries among those which replied was between 53 and 64 per cent. In the fourth and fifth surveys, retentionist countries accounted for a lower proportion of the respondents: 42 per cent and 38 per cent, respectively. This reflects in part the increasing number of countries that have become abolitionist, but this is far from being the only reason. Indeed, in the fifth survey, only 17 (16.5 per cent) of the 103 countries or territories that remained retentionist at the end of the reporting period (31 December 1993) provided information and 43 per cent of the 21 de facto abolitionist countries.

18. In this sixth survey the response rate from retentionist countries was hardly better. Only 13 (18 per cent) of the 71 countries that retained the death penalty at the end of the year 2000 returned the questionnaire (see table 1, sect. D) and there was a disappointing response from de facto abolitionist countries: from only 9 (25 per cent) of the 36 (table 1, sect. C). Furthermore, comparisons among surveys are vitiated by the fact that respondents to one questionnaire do not always respond to the next. Indeed, 32 countries that responded to the fifth survey in 1994 did not send a response to the sixth survey, about 43 per cent of them being retentionist (including de facto abolitionist) States. From another perspective, 41 per cent (26 of 63) of the States that replied to the sixth survey did not respond to the fifth. In addition, there was a great deal of variability in the amount of information that countries provided, as noted above and throughout this report.

19. It has proved useful to analyse the flow of responses to the quinquennial surveys of the Secretary-General since the first was launched in 1975, always bearing in mind that many new States have come into existence during the period. Among the countries and areas that could have replied to all six surveys covering the 30-year period between 1969 and 1998, 43 did not reply to any of them.[5] Only 8[6] of these 43 replied to the requests of the Secretary-General for information for the report on the implementation of the safeguards published in 1988 or the annual, supplementary reports submitted to the Commission on Human Rights in 1998 and 1999.

20. Only 7 of the 43 non-responding States had become abolitionist by the end of 2000,[7] 13 had progressed at various stages to de facto abolitionist status[8] and the majority, 22, had remained retentionist throughout the period.[9]

Table 1
Death penalty status at the end of 2000

			Number of countries and areas	
			Total	*Replies*
A.	**Complete abolitionist**		**76**	**34**
1.	Have remained totally abolitionist		54[a]	23[b]
2.	Have become totally abolitionist:			
	(a) From abolitionist for ordinary crimes		6[c]	5[d]
	(b) From retentionist but de facto abolitionist		4[e]	2[f]
	(c) From retentionist		12[g]	4[h]
		Total (2)	22	11
B.	**Abolitionist for ordinary crimes**		**11**	**7**
1.	Have remained abolitionist for ordinary crimes		8[i]	7[j]
2.	Have become abolitionist for ordinary crimes:			
	(a) From abolitionist		-	-
	(b) From retentionist but de facto abolitionist		1[k]	-
	(c) From retentionist		2[l]	-
		Total (2)	3	-
C.	**Retentionist but de facto abolitionist**		**36**	**9**
1.	Have remained de facto abolitionist		18[m]	3
	With no death sentences reported		14[n]	2[o]
	With death sentences reported		4[p]	1[q]
2.	Have become de facto abolitionist:			
	(a) From abolitionist		1[r]	-
	(b) From abolitionist for ordinary crimes		-	-
	(c) From retentionist		17[s]	6
	With no death sentences reported		4[t]	1[u]
	With death sentences reported		13[v]	5[w]
		Total (2)	18	5
D.	**Retentionist**		**71**	**13**
1.	Have remained retentionist with executions		55[x]	10[y]
2.	No executions recorded since 1994		6[z]	1[aa]
3.	Have ceased death sentences and executions since 1994		1[bb]	-
4.	Have reverted from de facto abolitionist status to retentionist by resuming executions		9[cc]	2[dd]
		Grand total	**194**	**63**

[a] Andorra, Angola, Australia, Austria, Cambodia, Cape Verde, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Kiribati, Liechtenstein, Luxembourg, Marshall Islands, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Portugal, Romania, San Marino, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, Solomon Islands, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tuvalu, Uruguay, Vanuatu and Venezuela.

[b] Austria, Australia, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Finland, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Mozambique, New Zealand, Norway, Slovakia, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Uruguay.

[c] Canada, Italy, Malta, Nepal, Spain and United Kingdom.

[d] Canada, Italy, Malta, Spain and United Kingdom.

[e] Belgium, Bolivia (see para. 35), Côte d'Ivoire and Djibouti.

[f] Belgium and Djibouti.

[g] Azerbaijan, Bulgaria, Estonia, Georgia, Lithuania, Mauritius, Poland, Republic of Moldova, South Africa and, in 1999, Turkmenistan and Ukraine, and East Timor (on attaining independence).

[h] Bulgaria, Estonia, Lithuania and Poland.

[i] Argentina, Brazil, Cyprus, El Salvador, Fiji, Israel, Mexico and Peru.

[j] Argentina, Brazil, Cyprus, El Salvador, Fiji, Mexico and Peru.

[k] Bosnia and Herzegovina.

[l] Albania (2000) and Latvia (1999).

[m] Bhutan, Brunei Darussalam, Central African Republic, Congo, Grenada, Madagascar, Maldives, Mali, Nauru, Niger, Papua New Guinea, Samoa, Senegal, Sri Lanka, Suriname, Togo, Tonga and Turkey.

[n] Bhutan, Brunei Darussalam, Central African Republic, Congo, Grenada, Madagascar, Maldives, Nauru, Niger, Samoa, Senegal, Suriname, Togo and Tonga.

[o] Niger and Togo.

[p] Mali, Papua New Guinea, Sri Lanka and Turkey.

[q] Turkey.

[r] Gambia.

[s] Antigua and Barbuda, Armenia (last execution in 1991; classified itself as de facto abolitionist on the grounds that a bill was before parliament in 1999 to abolish the death penalty; signed Protocol No. 6, in January 2001), Barbados, Belize, Benin, Burkina Faso, Chile, Dominica, Eritrea, Gabon, Guinea, Jamaica, Lao People's Democratic Republic, Mauritania, Myanmar, Swaziland and Yugoslavia (1999).

[t] Eritrea, Gabon, Lao People's Democratic Republic and Swaziland.

[u] Eritrea.

[v] Antigua and Barbuda, Barbados, Belize, Chile, Dominica, Guinea, Jamaica; became de facto abolitionist in 1999: Armenia, Benin, Burkina Faso, Mauritania, Myanmar and Yugoslavia.

[w] Armenia, Antigua and Barbuda, Barbados, Chile and Myanmar.

[x] Afghanistan, Algeria, Bangladesh, Belarus, Botswana, Cameroon, China, Cuba, Democratic People's Republic of Korea (no executions reported), Democratic Republic of the Congo, Egypt, Equatorial Guinea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Liberia (no executions reported, last execution 1978), Libyan Arab Jamahiriya, Malaysia, Mongolia, Nigeria, Oman, Pakistan, Palestine, Republic of Korea, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia (no judiciary or functioning court system since the collapse of the central government in 1991), Sudan, Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, Uganda, United Arab Emirates, United Republic of Tanzania, United States, Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe.

[y] Belarus, Cameroon, Indonesia, Iraq, Japan, Kazakhstan, Lebanon, Rwanda, Thailand and United States.

[z] Chad, Ghana, Kenya, Malawi and Morocco. Also, included here is the Russian Federation, which formally ceased executions in 1996 in expectation of abolishing the death penalty (although some executions continued up to 1999 in Chechnya under the local Islamic authorities).

[aa] Morocco.

[bb] Tunisia.

[cc] Bahamas, Bahrain, Burundi, Comoros, Guatemala, Philippines, Qatar, Saint Kitts and Nevis and Trinidad and Tobago.

[dd] Bahrain and Comoros.

21. Only 63 countries have replied to three of the surveys, roughly one third of those which could have done so. The majority of them (68 per cent) were abolitionist by the end of 2000. Forty-one States, about 1 in 4 of those in a position to do so, replied to four or more surveys.

22. Thus it is the retentionist countries that have been most reticent in responding to the quinquennial surveys, among them some that have most frequently applied the death penalty. Their reluctance to provide information to the Secretary-General on a regular basis has become a worrisome feature of the quinquennial surveys and analytical reports. It threatens to undermine the value and validity of the quinquennial exercise as a whole. It is from those retentionist States, many of which do not publish any official statistics relating to the use of capital punishment, that information, through a United Nations survey, is most needed.

23. For that reason, as mandated, and so as to obtain a truer picture of the status and situation with respect to application of the death penalty and safeguards guaranteeing protection of the rights of those facing the death penalty throughout the world, the sixth quinquennial report of the Secretary-General, more so than in the past, relies on information derived from a variety of other sources. In particular, it was necessary to draw on external sources in order to ascertain the number of death sentences imposed and executions carried out around the world during the period under review. Of particular value in that regard have been the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the reports of, and submissions to, the Human Rights Committee; the reports of the Secretary-General to the Commission on Human Rights; a report from the Organization for Security and Cooperation in Europe (OSCE); reports submitted to the Parliamentary Assembly of the Council of Europe; and publications of the Council of Europe. Useful data have also been culled from national statistics, reports from Governments, academic sources and information provided by non-governmental organizations, in particular, Amnesty International. More recent data for 1999 and 2000, referred to in the present report, are intended to supplement the information provided by the survey.

III. Changes in the status of the death penalty during the period 1994-2000

24. The responses received and the information gathered from other sources have been analysed according to the pattern established for the fifth survey, which covered the years 1989-1993. That is, countries have been arranged according to their death penalty status at the beginning of the quinquennium in January 1994 so that changes in law and practice during the subsequent five years—and, for the present revised report, up to the end of 2000—can be readily perceived and clearly assessed.

A. Countries that had abolished the death penalty for all crimes by the beginning of 1994

1. Countries that remained abolitionist

25. At the beginning of 1994, 55 countries had abolished the death penalty for all crimes (see table 1, footnotes a and r). They include 23 of the 63 countries that responded to the sixth survey: Australia, Austria, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Finland, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Mozambique, New Zealand, Norway, Slovakia, Slovenia, Sweden, Switzerland, Uruguay and the former Yugoslav Republic of Macedonia. Only one of these, Ecuador, stated that there had been proposals for reinstituting the death penalty and this was because of the increase in cases of kidnapping and other serious offences. In its reply, it also stated that the death penalty might have served on occasion as a deterrent, with the effect of slowing down the increase in crime. In that country, the main problem was unemployment, with all its consequences, poverty, crime and ignorance, and that to focus on anything else was superfluous.

2. Countries that reverted to capital punishment

26. Only one of the 32 totally abolitionist countries that did not reply to the sixth survey reverted to capital punishment. The Gambia, which had been abolitionist for all crimes in 1994, reinstated capital punishment through a decree issued by the Armed Forces

Provisional Ruling Council in 1995, after a military coup d'état. However, since no executions have taken place since the coup and the last execution was in 1981, the Gambia is categorized as abolitionist de facto. Two states of the United States reintroduced the death penalty—Kansas in 1994 and New York in 1995—although no executions have yet taken place. None of the other countries have considered reverting to capital punishment.

27. As the quinquennial period began, 55 countries and territories had embraced total abolition. At the end of the quinquennium, all but one of them had remained abolitionist.

B. Countries that had abolished the death penalty for ordinary crimes at the beginning of 1994

1. Countries that became abolitionist for all crimes

28. At the beginning of 1994, 14 countries had abolished the death penalty for ordinary offences but not for special offences, whether committed in times of war or peace (see table 1, footnotes c and i).

29. Twelve of the 14 countries replied to the sixth survey: Argentina, Brazil, Canada, Cyprus, El Salvador, Fiji, Italy, Malta, Mexico, Peru, Spain and United Kingdom. Five of the countries became abolitionist for all crimes in the period 1994-2000. Two of them, Italy (1994) and Spain (1995), abolished the death penalty for all offences, as noted in the fifth survey (E/CN.15/1996/19). A further two, Canada and the United Kingdom, did so in 1998. In Canada, the Minister of Defence had introduced a bill to amend the National Defence Act, the effect of which was to replace the death penalty by life imprisonment as the maximum punishment for certain offences under military law committed in time of war.[10] During the passage of the 1998 Crime and Disorder Act through the United Kingdom Parliament, an amendment was introduced by a backbench Member of Parliament, which removed from the statute book the last two ancient and unused remnants of capital punishment, namely, treason and piracy. Later in that year, the death penalty for military offences of all kinds was abolished by a clause inserted into the Human Rights Act 1998. Malta abolished the death penalty for all military offences when the Armed Forces (Amendment) Act was passed in March 2000, thus becoming abolitionist for all crimes.[11] In addition, Cyprus, whose criminal code is modelled on English criminal law, abolished the death penalty for treason and piracy in 1999. Cyprus, however, has yet to abolish capital punishment for military offences.

30. Among those States which did not reply to the sixth survey, one, Nepal, also became totally abolitionist. Article 12 of the Constitution of the Kingdom of Nepal, which came into effect in 1990, states that no law should be made that provides for capital punishment. Existing laws had to be reviewed within one year to ensure their compliance with this and other provisions. It was not until 1997 that the Supreme Court of Nepal ruled that the death penalty provisions that had been retained for espionage and for attacking the Royal Family after the penalty had been abolished for all other offences in 1990 were inoperative, thus confirming that the Constitution prohibited capital punishment. Thus, taking together those countries which replied to the sixth survey and those which did not, six countries in all that were formerly in the "abolitionist for ordinary offences" group joined the "abolitionist for all offences" category.

2. Countries that have remained abolitionist for ordinary crimes

31. Most of the countries that have remained abolitionist for ordinary crimes regard themselves in fact as de facto abolitionist for all crimes, even if no moves have been made to eliminate the death penalty for all military offences in time of foreign war. This is because executions in such circumstances are regarded as a very remote contingency and indeed have not arisen for many years. This attitude is prevalent in countries that replied to the survey (Argentina, Brazil, Cyprus, El Salvador, Fiji and Mexico) and probably also in the one that did not reply (Israel). El Salvador, for example, stated that, under article 28 of the Constitution of the Republic, the death penalty might only be imposed in those cases specified by military laws during a state of international war, and that, in practice, this amounted to a prohibition of the death penalty, as it was only imposed as an exception in the aforementioned case. Peru, which expanded the potential scope of the death penalty in 1993 through a constitutional reform for two offences against the

State, namely, treason and terrorism carried out within the country,[12] reported that no persons had been executed under those provisions.

32. Thus, at the beginning of 1994, 14 countries were abolitionist for ordinary offences only. Six of them became abolitionist for all offences, leaving eight that did not change their status during the quinquennium.

C. Retentionist countries at the beginning of 1994

33. As the quinquennium began, 94 countries could be classified as retentionist and a further 30 retained capital punishment but were considered de facto abolitionist on the grounds that no person had been judicially executed for at least 10 years.

1. Retentionist countries that were de facto abolitionist at the beginning of 1994

34. Seven of the responding countries had been considered de facto abolitionist at the beginning of 1994 because there had been no executions for at least 10 years: Belgium (1950), Bahrain (1977), Comoros (since independence in 1975), Djibouti (since independence in 1977), Niger (1976), Togo (1979) and Turkey (1984).

(a) De facto abolitionist countries that abolished the death penalty

35. Between 1994 and 1998, Belgium and Djibouti became abolitionist for all crimes. The reformed *Code pénal* (Penal Code) and the *Code de procédure pénale* (Code of Criminal Procedure) came into force in Djibouti in January 1995. Only one person had previously been sentenced to death, for a terrorist offence, and his sentence had been commuted to life imprisonment in 1993. Djibouti attributed the decision to abolish capital punishment to a combination of public opinion, political will and empirical evidence. Belgium, a prime example of a de facto abolitionist country where the last execution had taken place in 1950, finally abolished the death penalty in July 1996. According to the Constitution of Bolivia of 1967, which was amended in 1995, article 17 prohibited the use of the death penalty. Despite that prohibition, the Penal Code of 1973 provided for capital punishment. To bring the law into line with the Constitution, the Bolivian Congress, by law 1768 of 1997, formally abolished the death penalty for all ordinary offences and crimes against the security of the State. It had yet to be formally removed under the Military Code, but the Bolivian Constitution provided the overriding legal authority. The Government of Bolivia had confirmed in a previous response to the United Nations that capital punishment had been banned from civil and military law.[13] In July 2000, when a new Constitution was adopted by referendum, Côte d'Ivoire, where the last execution had taken place in 1960, abolished the death penalty for all crimes.

36. One other country that did not respond to the sixth survey moved from de facto abolitionist to abolitionist for ordinary crimes, Bosnia and Herzegovina. In September 1997, the Human Rights Chamber of the Human Rights Commission (established under the General Framework Agreement for Peace in Bosnia and Herzegovina) ruled that the death penalty could not be imposed for crimes committed in peacetime. In all, five de facto abolitionist countries became abolitionist.

(b) Countries that remained de facto abolitionist

37. Eighteen countries remained de facto abolitionist from the beginning of 1994 until the end of 2000. Three of them replied to the survey, the Niger, Togo and Turkey. It appeared from the responses that the Niger and Togo remained firmly committed to their de facto status, for no death sentences had been passed in the period 1994-1999 in either country. Turkish courts, however, had continued to hand down death sentences, 19 for ordinary offences and 11 for offences against the State. As regards the remaining 15 countries that did not reply to the sixth survey, no death sentences were reported from other sources during the period under review in respect of 12 of them (Bhutan, Brunei Darussalam, Central African Republic, Congo, Grenada, Madagascar, Maldives, Nauru, Samoa, Senegal, Suriname and Tonga), but death sentences continued to be imposed in 3 of them (Mali, Papua New Guinea and Sri Lanka).

(c) De facto abolitionist countries that resumed executions

38. Two of the de facto abolitionist countries that resumed executions during the quinquennium responded to the sixth survey, Comoros and Bahrain. In

1997, Comoros carried out its first executions since gaining independence in 1975. Two adult males convicted of murder were executed, one in public by firing squad. After 19 years of virtual abolition, Bahrain also reverted to capital punishment when, in 1996, an adult male was executed for the premeditated murder of a police officer.

39. Five other countries (none of which replied to the current survey) recommenced executions between 1994 and 1998. When an adult male was executed in Trinidad and Tobago in July 1994 while appeal procedures were still pending (see E/CN.4/1995/61, para. 382), it was the first death sentence to be carried out in the country in 15 years. Guatemala carried out its first executions in 13 years in 1996, when two adult males were put to death for the rape and murder of a child. Also in 1996, the Bahamas hanged an adult male for murder, the first person to be executed since 1984. Burundi executed six adults in 1997 for participation in the massacres of Tutsi civilians in 1993, the first executions carried out since 1981. In 1998, after a period of 13 years, Saint Kitts and Nevis executed an adult male for murder.

40. In 1999, those countries were joined by the Philippines when an adult male was executed for the rape of his stepchild, the first execution in 23 years. After a period of 11 years without executions, they were resumed by Qatar when, in June 2000, two adult males and an adult female were executed for murder.[14] Although executions have yet to take place in Sri Lanka, the Government has been seriously contemplating the resumption of executions after a moratorium of 24 years. Death sentences continue to be imposed, indeed as many as 435 in the six years from 1994 to 1999 and 68 in 1999.

(d) Summary

41. In summary, 30 countries were considered to be de facto abolitionist at the beginning of 1994. By the end of 2000, five of them had become abolitionist, four for all offences and one for ordinary offences. Eight of the 30 had resumed executions, thereby becoming retentionist. This means that 18 of the 30 had remained de facto abolitionist throughout the period (see table 1, footnote m). One further country that became de facto abolitionist during the period under review resumed executions a year later. Thus, nine countries that had appeared to be de facto abolitionist reverted to capital punishment. The action of those countries shows that the mere absence of executions, even over a long period of time, cannot guarantee de facto abolitionist status.

42. This evidence, taken together, suggests that the concept of "de facto abolitionist", based purely on the criterion of the number of years without executions, may no longer have the credibility at one time ascribed to it. Now that so many countries have become truly abolitionist, it seems no longer necessary or politically advantageous to treat de facto abolitionist States as if they were a subcategory of the abolitionist group. Rather, until they have clearly indicated their intention to remove capital punishment from their legislation and to subscribe to international conventions that ban its reintroduction, they are best regarded as a subcategory of retentionist States, albeit ones that appear to be moving in the abolitionist direction.

2. Countries that retained and enforced capital punishment at the beginning of 1994

43. From a variety of sources it can be established that, at the beginning of 1994, 94 countries and areas retained the death penalty in their criminal law and had enforced it through executions within the previous decade. Only 21 of them (22 per cent) replied to the sixth survey: Antigua and Barbuda, Armenia, Barbados, Belarus, Bulgaria, Cameroon, Chile, Eritrea, Estonia, Indonesia, Iraq, Japan, Kazakhstan, Lebanon, Lithuania, Morocco, Myanmar, Poland, Rwanda, Thailand and United States.

44. Of those 21 countries, 10 had either abolished the death penalty or become de facto abolitionist by the end of 2000. There were no plans apparent in the remaining 11 countries (Belarus, Cameroon, Indonesia, Iraq, Japan, Kazakhstan, Lebanon, Morocco, Rwanda, Thailand and United States) to abolish the death penalty or cease executions entirely. Kazakhstan, however, reported that it had reduced the number of offences, both ordinary and special, for which the death penalty could be imposed.

(a) Retentionist countries that became abolitionist

45. Bulgaria, Estonia, Lithuania and Poland all abolished capital punishment completely in 1998. Abolition in Bulgaria was achieved in December 1998 (nine years after the last execution) following a

presidential initiative that was taken up by the Legal Committee of the National Assembly. The last execution in Estonia took place in 1991, although death sentences continued to be imposed for aggravated murder (13 from 1994 to 1998). The Estonian Parliament totally abolished the death penalty in May 1998 following ratification in March 1998 of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention on Human Rights").[15] In its response to the questionnaire, Estonia stated that abolition had been brought about by a combination of political will and the influence of United Nations policy or instruments. Lithuania had not executed anyone since July 1995, when a moratorium on executions was established with a view to abolishing the death penalty. In December 1998, the Constitutional Court held that the provision for the death penalty in the Lithuanian Criminal Code was unconstitutional. As a consequence, the Criminal Code was amended on 21 December 1998, so as to abolish capital punishment for all criminal offences. The Lithuanian authorities also attributed the transformation to political will. Between April and September 1998, when the new Polish Penal Code replaced the death penalty by life imprisonment as the most serious penal sanction, no executions took place. In its reply, Poland mentioned that, between 1994 and 1998, there had been initiatives to reinstate the death penalty. Like Estonia and Lithuania, it said that abolition had been achieved by a combination of political will, official enquiry and the influence of United Nations policy.

46. In addition to Bulgaria, Estonia, Lithuania and Poland, five countries that did not reply to the sixth survey also moved from being retentionist to abolitionist for all offences during the period 1994-1998, namely, Azerbaijan, Georgia, Mauritius, the Republic of Moldova and South Africa. In June 1995, the Constitutional Court of South Africa ruled that the death penalty was unconstitutional, but it was unclear whether this applied to the crime of treason in wartime. This was clarified two years later when the Criminal Law Amendment Act removed all references to capital punishment from the statute book, including treason in wartime. In 1995, the reformist Government in Mauritius passed, by a large majority, the Abolition of the Death Penalty Bill. The President of Mauritius refused to sign it, but it was successfully reintroduced and became law without the need for presidential assent. At the end of 1995, the Parliament of the Republic of Moldova voted unanimously to eliminate the death penalty from the Penal Code (although it still exists in the separatist province of Transdniestra). In November 1997, a proposal made by the President of Georgia to replace the death penalty with life imprisonment for all offences was opposed by only one member of the Georgian Parliament. The complete abolition of the death penalty by the Parliament of Azerbaijan in February 1998, following a moratorium on executions since June 1993, was also the result of a bill introduced by the President of the Republic in support of human rights.

47. These nine former retentionist States were joined by four more countries and areas in 1999, one of which became abolitionist for ordinary offences (Latvia) and three became totally abolitionist (Turkmenistan, Ukraine and the territory of East Timor), making a total of 13 countries and territories that moved from retentionist to abolitionist between the beginning of 1994 and the end of 2000. Although the Latvian Criminal Code of 1998 had retained the death penalty, it was abolished in effect for ordinary offences in peacetime by Latvia's ratification of Protocol No. 6 to the European Convention on Human Rights. In addition, the United Kingdom's dependent territory of Bermuda also abolished the death penalty in 1999.

48. The change in policy and practice in Turkmenistan has been remarkable. Although no official figures were published, it was thought that well over 100 people were executed each year in 1994, 1995 and 1996. The new Criminal Code adopted in 1997 provided the death penalty for as many as 17 offences, yet, on 1 January 1999, the President announced a moratorium on executions and by December had abolished the death penalty completely by presidential decree.[16] Even though Ukraine agreed, from the date of accession to the Council of Europe in November 1995, to an immediate moratorium on executions and to ratify Protocol No. 6 to the European Convention within three years, executions continued to be carried out on a considerable scale: 180 persons were executed from the beginning of 1996 until the moratorium was eventually put into effect on 11 March 1997. Attempts by the Ukrainian Cabinet to abolish the death penalty through a provision of the new Criminal Code failed to gain the support of the Ukrainian Supreme Council (Parliament). In December 1999, however, the

Supreme Court of Ukraine ruled that all provisions of the Criminal Code relating to the death penalty were incompatible with articles 27 and 28 of the Ukrainian Constitution.[17] Finally, in February 2000, the Ukrainian Parliament removed provisions on the death penalty from the Ukrainian Criminal Code, the Code of Prosecutions Procedure and the Penitentiary Code. East Timor, on attaining independence from Indonesia in 1999, abolished the death penalty completely.

49. Towards the end of the period covered by this survey, Albania had begun to move rapidly towards formal abolition of the death penalty. Although death sentences continued to be imposed (there were reports of at least two in 1999), the last execution took place in 1995. In June 1996, the President of the Parliament announced, in a signed declaration in preparation for Albania's entry into the Council of Europe, that Albania would put into place a moratorium on executions until such time as the death penalty was abolished. In December 1999, the Constitutional Court ruled that the death penalty was unconstitutional. In September 2000, Albania abolished the death penalty for ordinary crimes and ratified Protocol No. 6 to the European Convention on Human Rights.

50. In summary, 12 countries that were retentionist in 1994 became abolitionist for all crimes and 2 for ordinary crimes by the end of 2000 (see table 1, footnotes g and l).

(b) Countries that became or claimed to be de facto abolitionist

51. Classification of the death penalty status of Armenia, Chile, Eritrea and Myanmar was difficult for the purposes of the present report. The future of capital punishment in Eritrea remains uncertain until the new penal code comes into force, but no death sentences appear to have been imposed since 1994 or executions carried out since 1989. Armenia reported that no one had been executed since 1991, although death sentences continued to be passed. The reply from Armenia indicated that the Government intended to abolish the death penalty. According to non-governmental sources, a bill was first introduced in 1997 with the support of the President, who had been responsible for the establishment of a moratorium on executions since 1991, pending the introduction of a new criminal code that would remove the death penalty from the list of prescribed punishments. At the end of 1999, the code had yet to be approved by the Armenian Parliament, although the de facto moratorium on executions remained in force.[18] In its reply, Armenia classified itself as de facto abolitionist and, since then, as an indication of its intentions Armenia signed Protocol No. 6 to the European Convention on Human Rights in January 2001.

52. No executions have been reported from Chile since 1985 and therefore it became de facto abolitionist by the end of 1995. Myanmar stated in its reply to the survey that it was a de facto abolitionist country. A response was not given to the question requesting the date of the last execution, but there is reason to believe that it took place in 1989. Some death sentences are reported to have been imposed in recent years, although Myanmar did not provide statistics to that effect.

53. According to the convention of 10 years without executions, Barbados became de facto abolitionist in 1994. Five other countries that did not reply to the sixth survey also became de facto abolitionist: the West African State of Guinea and the Caribbean States of Antigua and Barbuda, Belize, Dominica and Jamaica. In all of these countries, however, death sentences were imposed during the period under review and in several of them imprisoned persons on capital conviction remained on death row. The Government of Jamaica indicated that it might follow Trinidad and Tobago and resume executions. Seven other countries that did not reply to the survey also became de facto abolitionist by the end of 1999, providing that the absence of reports of judicial executions since 1989 are correct: Benin, Burkina Faso, Gabon, Lao People's Democratic Republic, Mauritania, Swaziland and Yugoslavia. Several of them, however, continued to impose the death sentence and, for the reasons given in paragraphs 41 and 42 above, it is uncertain whether those States have renounced the use of the death penalty.

54. Despite the reservations noted above, the fact that 17 countries (see table 1, footnote s) that were retentionist at the beginning of 1994 had become de facto abolitionist by the end of 2000 is of considerable significance in relation to a decrease in the number of countries where executions take place on a regular basis.

(c) Countries that remained retentionist

55. Thus, there were 63 countries and areas whose death penalty status was no different at the end of 2000 from what it had been at the beginning of 1994. Five of them are, however, believed to have carried out no executions between 1994 and 2000, although they have continued to pass death sentences, namely, Chad, Ghana, Kenya, Malawi and Morocco. In July 1997, the President of Malawi commuted all death sentences. He had not signed any execution warrants since taking up office in 1994 and stated that he would not in future do so.

56. In the Russian Federation, a moratorium on executions was put into effect by presidential decree in August 1996, although executions continued in Chechnya under Islamic law in 1997, 1998 and 1999, when at least 13 people were executed. Upon accession to the Council of Europe, in 1996, the Russian Federation undertook to abolish the death penalty and ratify Protocol No. 6 to the European Convention on Human Rights within three years. By the end of 1999, however, it had neither abolished the death penalty in law nor ratified Protocol No. 6. Capital punishment was, in effect, banned by a ruling of the Constitutional Court in February 1999, which required that it could only be imposed when all citizens in all of the Federation's 89 republics, regions and territories had been granted the right to trial by jury. At present, this is only available in nine of the republics. In June 1999, according to information provided by OSCE, the President of the Russian Federation signed a decree commuting the sentences of all convicts on death row to either life sentences or terms of 25 years. Thus, there is good reason to believe that, within a short period of time, the Russian Federation will become an abolitionist State.

57. The last reported executions to be carried out in Tunisia were in 1991. Since then, it appears that no death sentences have been imposed and that no one has been executed. Tunisia may therefore be progressing towards de facto abolitionist status. Nevertheless, as stated above, in the absence of governmental assurances, the lack of executions cannot be taken as an indicator that the Government is now committed to moving towards the abolition of capital punishment de jure. Of significance was the moratorium on executions announced by the Governor of the State of Illinois in the United States in January 2000 when he set up an enquiry into the state's system of capital punishment because of concerns about wrongful convictions in capital cases (see para. 108 below). The President of the Philippines also commuted to life imprisonment the death sentences of 13 of the 120 prisoners whose death sentences had been confirmed by the Supreme Court and imposed a moratorium on executions in March 2000 for the remainder of the year, out of respect for the 2000th anniversary of the birth of Christ. Over a thousand prisoners remain on death row in the Philippines. Since 1998 there has been a moratorium on executions in Kyrgyzstan, which has been extended by the President until December 2001. However, death sentences continue to be imposed.[19]

58. Thus, 55 of the countries that have remained retentionist have carried out executions during the period 1994-2000 (see table 1, footnote x) and are not known to have given any indication that they intend in the near future to abolish the death penalty.

D. Status of the death penalty at the end of 2000: summary of changes since the beginning of 1994

59. Having charted the changes that have taken place since 1994, it is helpful to classify the countries according to their status at the end of 2000. Viewed in this way, it is possible to see how many countries have changed their death penalty status and in which way since the survey period began in 1994. This is shown in table 1, both for all countries and for those which replied to the sixth survey.

60. The major conclusion to be drawn from the sixth quinquennial survey is that the rate at which countries have embraced abolition has been sustained. During the period 1989-1993, 21 countries abolished capital punishment, 19 of them for all crimes in peacetime or in wartime (5 of which had already been abolitionist for ordinary offences), a pace of change described in the report on the fifth survey as quite remarkable. In the five years between 1994 and 1998, another 18 countries[20] eliminated the death penalty, 17 for all crimes (5 of which had already been abolitionist for ordinary offences) and 1 for ordinary crimes in peacetime. Moreover, in 1999 and 2000, 5 more countries became abolitionist for all crimes (1 of which had already been abolitionist for ordinary offences)[21] and another 2 became abolitionist for ordinary

offences,[22] making a total of 25 States (22 completely abolitionist and 3 abolitionist for ordinary crimes). Given that fewer new democratic States have come into existence in the latter period and that there is a smaller pool of retentionist countries and territories, which may be assumed to be more resistant to change, the continued movement towards abolition throughout the world has been impressive.

61. Although four States reintroduced the death penalty in the quinquennium 1989-1993, no de facto abolitionist States resumed executions. From 1994 to 2000, in the United States, the States of Kansas (1994) and New York (1995) reintroduced capital punishment, as did the Gambia in 1995 after a period of two years of total abolition. In addition, nine countries ceased to be de facto abolitionist by resuming executions, according to reports. Indeed, this is a worrying trend for those who support the abolitionist movement. An up-to-date list of abolitionist and retentionist countries is contained in annex I to the present report.

IV. Enforcement of the death penalty

62. The small number of replies received from countries that were retentionist at the beginning of 1994 could provide only the sparsest indication of the global use of capital punishment over the five years from 1994 to 1998. Twenty-two of the countries that replied to the sixth survey (6 of which were de facto abolitionist) had imposed death sentences at some time since 1994. Fifteen of the 22 provided statistics on the number of death sentences imposed.[23]

63. Ten of the 16 responding States (leaving aside the 6 de facto abolitionist countries) that had been retentionist during the period 1994-1998 reported the number of executions carried out: 1 in Bahrain, 168 in Belarus, 1 in Cameroon, 2 in the Comoros, 1 in Indonesia, 24 in Japan, 6 in Lebanon, 23 in Rwanda, 5 in Thailand and 274 in the United States.[24] All of the death sentences and executions were reported to have involved persons aged 18 years or over at the time of the offence, with the exception of the United States. In that country, three males aged 17 at the time of the offence were executed in 1998, one male in 1999 aged 16 at the time of the offence and 4 who had been 17 at the time of the offence were executed in 2000.[25] Between 1994 and 1998, 1 adult female was sentenced to death in Indonesia, 2 in Japan, 6 in Morocco, 2 in Rwanda, 4 in Thailand and 23 in the United States. One adult female was executed in Rwanda, another in Japan. In 1998, an adult woman was executed in Texas, the first woman to be executed in the United States since 1984. Another woman was executed in Florida in 1998, two more in 2000 in Texas and Arizona respectively and another in Oklahoma in January 2001.

64. Among the countries that responded to the sixth survey, persons were sentenced to death for crimes other than murder only in Indonesia, Morocco, Thailand and Turkey: 1 for a drug-related offence in Indonesia; 4 for military offences in Morocco; 22 (20 adult males and 2 adult females) in Thailand for drug-related offences and 11 adults in Turkey for offences against the State. None of these death sentences were carried out.

65. Where information was provided on the ethnicity and religious affiliation of the individuals executed, the responding States indicated that they were of the predominant ethnic group, with one exception (Lebanon), which indicated the "other" category.

66. Table 2 shows as far as can be ascertained from the number of executions reported annually by Amnesty International, the countries or areas in which 20 or more executions were carried out in the five-year period 1994-1998 and has been extended so as to include 1999. It also shows the estimated rate of executions per one million of the population. In many cases these figures are likely to underestimate substantially the true number of persons judicially executed and, of course, they do not include the often much larger number of persons in some of these countries or areas who are put to death extrajudicially. Furthermore, the average rate of executions shown per one million population over the five-year period will be lower than the true figure if executions have been carried out but not reported. For example, it is acknowledged by Amnesty International that the death penalty log of executions in China, which it publishes annually, based on reports of executions in various national newspapers, is likely to be a substantial underestimate of the true number.[26] Furthermore, some countries that should probably have been listed in table 2 have not been included because no information at all is available on the number of persons executed each year.[27]

67. As can been seen from table 2, the largest number of reported executions has been carried out in China, followed in descending order by the Islamic Republic of Iran, Saudi Arabia, the United States, Nigeria and Singapore. Substantial numbers of executions also took place in the Russian Federation, Turkmenistan and Ukraine before moratoria were put into effect. Other places where over a hundred people have been executed during the survey period are Belarus, the Democratic Republic of the Congo, where executions did not commence until 1998, Egypt, Kazakhstan, Taiwan Province of China and Viet Nam.

68. Raw numbers can, of course, be misleading when countries vary so greatly in the size of their populations. Thus, although China carried out by far the largest number of executions, it did not have the highest average annual rate per capita (2.01 per one million population in 1994-1998 and 1.85 for the years 1994-1999) among the countries and areas listed in table 2, although the real rate could be considerably higher. Before ceasing executions in 1997, Turkmenistan executed seven times as many as did China per capita (14.92 per one million),[28] which makes its achievement of total abolition in 1999 all the more remarkable. Among those countries which remain retentionist, Singapore had by far the highest rate of executions (13.83 for 1994-1998 and 13.57 for 1994-1999), followed by Saudi Arabia (4.65), Belarus (3.20 for 1994-1998),[29] Sierra Leone (2.84), Kyrgyzstan (2.80), Jordan (2.12) and China (2.01). Of the countries still remaining retentionist in 1999, only in three (China, Iran (Islamic Republic of) and Saudi Arabia) were more persons executed during 1994-1999 than in the United States. Yet that country had one of the lowest average annual rates of executions (0.23) per one million population. This could be misleading, as two thirds (65 per cent) of the executions in the United States between 1994 and 1999 took place in the 5 states shown in table 2 and only one third in the remaining 33 states with the death penalty. One third of the executions occurred in Texas and 13.7 per cent in Virginia, which had the highest rate in relation to population (1.24 for 1994-1999). This was equivalent to two thirds of China's reported average annual execution rate (1.82) for those six years.

69. According to reports and information drawn from a variety of sources (see para. 23), during the period under review, executions took place for convictions for various offences, for crimes against the person, drug-related offences and for offences of a financial, political and sexual nature. The majority of executions in Singapore, amounting to 76 per cent for the years from 1994 to 1999, were reportedly for trafficking in drugs.[30] Individuals were reported to have been convicted and executed for rape in China, Jordan, Saudi Arabia, Somalia and the United Arab Emirates. In the Islamic Republic of Iran, reports indicate that persons were executed for adultery and sodomy. Persons were reportedly executed for armed robbery in China, the Democratic Republic of the Congo, Malaysia and Nigeria. In a few countries, most notably China and also Viet Nam, individuals were executed for economic offences, including embezzlement and corruption by public officials. In China, individuals were executed for a wide range of offences, especially during its crackdown on crime in 1996, including persons convicted of publishing and selling obscene material, smuggling forged currency, tax-related offences, public order offences and trafficking in women and children. Iraq is said to have executed political prisoners and the Palestine Authority has, as recently as January 2001, executed males for collaborating with Israeli security forces.

70. Over the six-year period 1994-1999, the only figures available[31] suggest that an estimated 26,800 persons were sentenced to death and approximately 15,300 judicially executed. The annual number of death sentences fluctuated between 3,850 and 7,100, and the annual number of executions varied between approximately 1,600 and 4,200, largely because the reported numbers varied substantially from year to year in China, the incidence having increased in particular during the above-mentioned crackdown on crime in 1996.

Table 2

Countries and areas reported to have executed at least 20 persons in the period 1994-1999 and estimated annual rate per 1 million population[a, b, c]

Country or area	Estimated population in 1997	Total executions 1994-1998	Estimated annual rate per 1 million population	Total executions 1994-1999	Estimated annual rate per 1 million population
Afghanistan	19 000 000	34	0.36	46	0.40
Belarus	10 500 000	168	3.20		
China	1 226 260 000	12 338	2.01	13 601	1.85
Democratic Republic of the Congo	47 000 000	100	0.43	200	0.71
Cuba	11 100 000	9	0.16	22	0.33
Egypt	61 500 000	132	0.43	148	0.40
Iran (Islamic Republic of)	63 500 000	505	1.59	670	1.76
Japan	126 000 000	24	0.04	29	0.04
Jordan	5 200 000	55	2.12	67	2.15
Kazakhstan	17 000 000	148	1.74	148	1.45
Kyrgystan	5 000 000	70	2.80	70	2.33
Libyan Arab Jamahiriya	5 292 000	31	1.17	31	0.98
Nigeria	120 000 000	248	0.41	251	0.35
Pakistan	130 600 000	34	0.05	47	0.06
Republic of Korea	46 000 000	57	0.25	57	0.21
Russian Federation[d]	146 000 000[e]	161	0.22	161	0.18
Rwanda	8 000 000	23	0.58	23	0.48
Saudi Arabia	20 000 000	465	4.65	568	4.73
Sierra Leone	5 000 000	71	2.84	71	2.37
Singapore	3 500 000	242	13.83	285	13.57
Taiwan Province of China	21 500 000	121	1.13	145	1.12
Thailand	61 000 000	5	0.02	22	0.06
Turkmenistan[f]	5 000 000	373	14.92	373	12.43
Uganda	21 500 000	4	0.04	32	0.25
Ukraine[f]	50 090 000[e]	389	1.55	389	1.29
United Arab Emirates	3 000 000	18	1.2	20	1.11
United States of America	272 000 000	274	0.20	372	0.23
Florida	15 111 244	11	0.15	12	0.13
Missouri	5 468 338	21	0.77	30	0.91
South Carolina	3 885 736	16	0.82	20	0.86
Texas	20 044 141	93	0.93	128	1.06
Virginia	6 872 912	37	1.08	51	1.24
Viet Nam	77 000 000	145	0.38	153	0.33
Yemen	16 000 000	88	1.10	123	1.28
Zimbabwe	12 000 000	22	0.37	22	0.31

[a] Calculated on the basis of the average annual number of executions. Where there were no reports, it had to be assumed that the number was zero, although this may not have been the case in several of these countries. Population figures for 1997 from Keesing's Worldwide, *The Annual Register: A Record of World Events 1998* (Washington, D.C., 1999). The estimate of 3 million for Singapore in *The Annual Register* was too low in the light of the *Singapore Census of Population 2000*, which states that Singapore reached a population of 4 million in 2000. Therefore for the period covered by this survey the population of Singapore was estimated to be 3.5 million (see http://www.singstat.gov.sg/C2000/census.html).

[b] Figures for United States states are estimates from 1999, from the United States Census Bureau at http://quickfacts.census.gov/qfd/states/12000.html.

[c] Data derived from reports issued by Amnesty International.

[d] Ceased executions in 1996.

[e] 1998 figure.

[f] Ceased executions in 1997.

71. In this regard, it should be recalled that the Economic and Social Council, in its resolution 1989/64, urged Member States to publish, for each category of offence for which the death penalty was authorized, and if possible on an annual basis, information about the use of the death penalty. That information was to include the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency had been granted. The sixth survey has shown once again how important it is for Member States to respond positively to that request.

V. International developments

72. There have been important international developments in the United Nations, the Council of Europe and the European Union since the sixth quinquennium began. The General Assembly, the Economic and Social Council, the Commission on Crime Prevention and Criminal Justice and, in particular, the Commission on Human Rights have continually invited States that had not yet abolished the death penalty to consider the progressive restriction of the number of offences for which the death penalty may be imposed.

73. In its resolution 1997/12 of 3 April 1997, the Commission on Human Rights called upon all States that had not yet abolished the death penalty to consider suspending executions, with a view to completely abolishing the death penalty, and called upon all States parties to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) that had not yet done so to consider acceding to or ratifying the Second Optional Protocol thereto (resolution 44/128, annex), aiming at the abolition of the death penalty. In that resolution, the Commission expressed its conviction that abolition of the death penalty contributed to the enhancement of human dignity and to the progressive development of human rights. Twenty-seven countries had voted in favour of the resolution, with 11 against and 14 abstentions. Resolutions to the same effect were adopted by the Commission in 1998 and in 1999. By 1999, the number in favour of the resolution (Commission resolution 1999/61) had increased to 30, with 11 against and 12 abstentions. In 2000 the Commission again adopted a resolution (2000/65), by 27 votes to 13 with 12 abstentions, which, inter alia, called upon all States that still maintain the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty. It should also be noted that the Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on 17 July 1998,[32] did not provide the death penalty for any of the serious crimes in the Statute.

74. The Parliamentary Assembly of the Council of Europe has been particularly trenchant in its opposition to capital punishment. In its resolution 1044 (1994) and recommendation 1246 (1994), the Assembly called upon all the parliaments in the world that had not yet abolished the death penalty to do so promptly, following the example of the majority of Council of Europe member States. Furthermore, it averred that the death penalty had no legitimate place in the penal systems of modern civilized societies and that its application might well be compared with torture and be seen as inhumane and degrading punishment within the meaning of article 3 of the European Convention on Human Rights. In that regard, the Assembly made it a precondition that any country that wished to become a member of the Council of Europe should agree to implement an immediate moratorium on executions and then sign and ratify, within a set number of years, Protocol No. 6 to the European Convention.[33] This position (as the Council of Europe pointed out in its response to the sixth survey) was reaffirmed in Assembly resolution 1097 (1996) and again in resolution 1187 (1999), concerning a death-penalty-free Europe. This policy has proved to be a potent factor in persuading a number of new members from eastern Europe, including the Russian Federation and Ukraine, to cease executions despite the internal political pressures they faced in complying with the demands of the moratorium. As a symbol of its commitment to the abolition of the death penalty and the promotion of respect for human rights, democracy and the rule of law, the Council of Europe in 1999 published a collection of texts by major European abolitionists.[34]

75. Similarly, the European Union has made the abolition of capital punishment a precondition for membership and, in 1998, it adopted Guidelines to European Union Policy Towards Third Countries on the Death Penalty.[35] The guidelines state that the objectives of the European Union are to work towards the abolition of the death penalty as a strongly held policy view agreed by all member States. They stress that the death penalty has no legitimate place in the penal systems of modern civilized societies and that abolition of the death penalty contributes to human dignity and the progressive development of human rights. At the fifty-fourth session of the General Assembly, in September 1999, the Minister of Foreign Affairs of the Union declared that the European Union was committed to opposing the death penalty (see http://www.eurunion.org/legislat/deathpenalty/54thFinspeechexcrpt.htm). As a consequence, the European Union has made a series of démarches to state governors and the President of the United States of America relating to the pending executions of particular prisoners, as well as a démarche to the United States Assistant Secretary of State for Human Rights in February 2000.[36] In 1998, the subject of capital punishment was placed by agreement on the agenda of the European Union-China Human Rights Dialogue and was again discussed in 2000. Furthermore, it has featured in the bilateral United Kingdom-China Human Rights Dialogue and members of the British Foreign Secretary's Death Penalty Advisory Panel were invited by the Government of China for further discussions on the subject in September 2000. These developments augur well for a continuing dialogue on the policy of the Government of China on the use of the death penalty.[37]

76. Many European States have adopted the policy of refusing to extradite persons to countries that retain the death penalty if there is a risk that it will be imposed. At its 66th meeting, in April 2000, the Commission on Human Rights in resolution 2000/65 also adopted a similar stance by requesting States that had received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment would not be carried out.

77. In response to the Secretary-General's invitation for comment, the International Committee of the Red Cross (ICRC) stated that, in order to accomplish fully its mandate and to preserve and maintain the trust of its interlocutors, it is of utmost importance that ICRC act with neutrality, impartiality and discretion. Consequently, ICRC was of the view that it might not take a position in the general debate on this controversial issue but rather it preferred to examine individual cases for appropriate action. OSCE drew attention to the reports published by its Office for Democratic Institutions and Human Rights, which have served as background material for the discussions held on the issue at its regular human dimension implementation meetings or review conferences. The Inter-Parliamentary Union noted that its statutory conference, held in Moscow in September 1998, had called on all parliaments and their members to work effectively for the worldwide abolition of the death penalty or at least the establishment of a moratorium on executions pending the complete abolition of the death penalty. The Organization of American States (OAS) encompasses two principal human rights bodies, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which together are responsible for monitoring compliance by the member States of OAS with the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the various other inter-American human rights instruments. The mandate of the Inter-American Commission includes receiving petitions from persons and non-governmental entities concerning denunciations or complaints of violations of those instruments by member States and conducting on-site investigations with their consent. The Inter-American Court of Human Rights considers cases on the interpretation and application of the American Convention on Human Rights in respect of those member States which have accepted the Court's jurisdiction. The Court also has the authority, at the request of member States, to issue advisory opinions concerning the interpretation of the American Convention or of other treaties concerning the protection of human rights in the American States. Two inter-American instruments of particular relevance to the sixth survey are the American Convention on

Human Rights, specifically article 4 thereof, and the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Article 4, on the right to life, permits the death penalty, but subjects its imposition to certain restrictions. By way of example, States parties are prohibited from extending the death penalty to crimes to which it did not apply when each State party ratified the Convention. The Additional Protocol seeks to consolidate the practice of not applying the death penalty in the Americas by abolishing capital punishment in States parties to the Protocol. The Inter-American Commission and the Inter-American Court have adopted several decisions addressing the death penalty that are of relevance. OAS viewed the case of *Haniff Hilaire* v. *The Republic of Trinidad and Tobago* as of particular importance. The case was referred by the Inter-American Commission to the Inter-American Court of Human Rights on 25 May 1999. The Commission had argued, inter alia, that the State was responsible for violations of an individual's right to life under article 4 of the Convention and of his right to humane treatment under article 5 of the Convention by sentencing him to death pursuant to a law that mandated capital punishment for the crime of murder in the country. The case is currently in the preliminary objection stage of proceedings before the Court and judgements on the merits of the case are not anticipated until 2001, at the earliest (see also paras. 111-114 below).

78. Amnesty International stated that it opposed the death penalty as a violation of fundamental human rights, that is, the right to life and the right not to be subjected to cruel, inhumane or degrading treatment or punishment. It considered that there was no criminological justification for the death penalty that would outweigh the human rights grounds for abolishing it. The argument that the death penalty was needed to deter crime had, it considered, become discredited by consistent lack of scientific evidence that it did so more effectively than other punishments. It stated that the death penalty negated the internationally accepted penal goal of rehabilitating the offender. At the beginning of the new millennium, the world had moved further towards universal abolition than ever before. Amnesty International called upon Governments and their citizens to examine the full facts surrounding the death penalty and the convincing arguments against its use.

79. By the beginning of 1994, 20 countries had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty. Since then, 14 of the countries that responded to the sixth survey and 10 of the non-responding States have ratified the Second Optional Protocol. Thus, by the end of 2000, 44 countries had acceded to this international instrument, affirming their commitment to the abolition of the death penalty. A further five nations signed the Second Optional Protocol during the year 2000. The list of countries together with the dates of their signature and ratification, can be found in annex I, table 6, to the present report.

80. With respect to the European Convention on Human Rights, by the beginning of 1994 some 20 countries had ratified Protocol No. 6, which provides for the abolition of the death penalty in peacetime. A further 12 of the countries that responded to the sixth survey and 7 non-responding countries—19 in all—ratified the Protocol between January 1994 and December 2000. In the same period one (Russian Federation) non-responding State had signed but had yet to ratify the Protocol. Thus, by the end of 2000, as many as 39 European countries had ratified the instrument, committing themselves to permanent abolition of the death penalty in peacetime, and 1 other had signed it (see annex I, table 6). In January 2001 Armenia also signed Protocol No. 6.

81. Prior to 1994 only two countries had ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. During the period 1994-2000 it was ratified by a further five countries, namely, Uruguay (1994), Brazil (1996), Costa Rica and Ecuador (1998) and Nicaragua (1999)—making seven countries in all. Furthermore, Paraguay signed the Protocol in 1999 (see annex I, table 6).

VI. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

82. In its resolution 1996/15 of 23 July 1996, the Economic and Social Council called upon Member States in which the death penalty had not been abolished to apply effectively the safeguards guaranteeing protection of the rights of those facing the death penalty (see annex II). The safeguards had been approved by the Council in its resolution 1984/50 of 25 May 1984 and specific steps for their implementation were recommended by the Council in its resolution 1989/64.

83. The safeguards set forth the basic guarantees to be respected in criminal justice proceedings in order to ensure the rights of offenders charged with a capital offence. They state, inter alia, that capital punishment may be imposed only for the most serious crimes. They establish the right to benefit from lighter penalties under certain conditions and the mandatory right (with sufficient time for the preparation of a defence) to appeal and to seek clemency or pardon. Exemptions from capital punishment are laid down for persons below 18 years of age at the time of the commission of the offence and for pregnant women, new mothers and persons who are or have become insane or are suffering from mental retardation or extremely limited mental competence. Evidential requirements are stipulated in relation to findings of guilt and the competency of courts in order to ensure a fair trial and to leave no room for an alternative explanation of the facts. Defendants are to receive adequate assistance of counsel above and beyond that afforded in non-capital cases and those who do not sufficiently understand the language used in court are to be fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court. Finally, there is a humanitarian obligation to ensure that when capital punishment is carried out, both the period of detention under sentence of death and the method of execution should keep to a minimum the suffering of prisoners and avoid any exacerbation of such suffering.

84. Apart from Armenia, Eritrea and Myanmar, which did not answer any questions relating to safeguards (presumably because they regarded them as irrelevant to a de facto abolitionist country), the other 19 respondent retentionist and de facto abolitionist countries and areas reported that they were aware of the safeguards and that they considered they were being observed during the period 1994-1998. Mexico stated that it observed all the safeguards in relation to military offences committed in time of war. Both Japan and Thailand reported that there had been difficulties in observing the safeguards, the former stating that it was impossible to answer yes or no because, in Japan, some of the safeguards were observed and some of them were not. The reasons given were that the legislation did not prohibit the execution of the death penalty while in the middle of pardon proceedings and that a mandatory appeal system had not been adopted. In Thailand, difficulties were said to be connected with the expertise available, facilities, financial resources and legislation. In one official's opinion, Thailand was in need of technical advisory services to enable the safeguards to be observed more effectively in that country. In its reply, the United States stated: "We believe that the procedural safeguards required under American law generally meet or exceed ... standards recognized under international law." It submitted in evidence of this a comprehensive discussion of the procedural safeguards required for the imposition of capital punishment under American law published by the Georgetown University Law School in 1999.[18] As regards the United Nations safeguards in general, the United States declared:

> "Implementation of the death penalty in the United States has been and continues to be reviewed by judicial, legislative, and executive officials to both state and federal governments. Our highest state and federal courts have upheld capital punishment subject to the heightened procedural safeguards required under our state and federal constitutions and statutes, which generally meet or exceed those provided under international standards and the laws of most other nations."

85. Since relatively few retentionist States participated in the sixth survey, it was not possible to provide the kind of detailed information on the observance of safeguards that was contained in the fifth quinquennial report (E/1995/78, annex III)[19] and in previous reports. The present section of the sixth report has therefore been written largely on the basis of

the Secretary-General's mandate to draw upon all other available sources of information.

A. First safeguard

86. For the sixth survey, States were not invited to list specific legal definitions of offences for which capital punishment could be imposed, but to state whether capital offences were considered to be "ordinary" or "special". Ordinary offences were categorized into crimes against the person, crimes against property, drug-related offences and other offences (to be specified). Special offences were categorized as crimes against the State, military offences and other offences (to be specified).[40] Together with the information available from other sources, it is possible to give some indication of the extent to which crimes subject to the death penalty meet the criteria set out in the first safeguard. It should be borne in mind that some States may retain the death penalty in their criminal codes for offences that are rarely prosecuted, for which persons are even more rarely tried and hardly ever, if at all, executed.

87. As noted in the report on the fifth survey, the definition of the most serious crimes may vary in different social, cultural, religious and political contexts (E/1995/78, para. 54). However, the meaning of intentional crimes and of lethal or other extremely grave consequences is intended to imply that the offences should be life-threatening, in the sense that this is a very likely consequence of the action. In its resolution 1999/61 of 28 April 1999 and subsequently in resolution 2000/65, the Commission on Human Rights urged all States that still maintained the death penalty to ensure that it was not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience. In her interim report on extrajudicial, summary or arbitrary executions, Asma Jahangir, Special Rapporteur to the Commission on Human Rights, submitted by the Secretary-General to the General Assembly at its fifty-fifth session (A/55/288), went further. She stated (para. 34):

> "The Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, actions relating to prevailing moral values, or activities of a religious or political nature—including acts of treason, espionage, or vaguely defined acts usually described as 'crimes against the State'."

Clearly, the amorphous phrase "extremely grave consequences" has left itself open to wide interpretation by a number of countries.

88. As already illustrated in paragraph 69 above, persons have been executed for a wide range of offences since the beginning of 1994. As far as can be determined, all of the 22 retentionist and de facto abolitionist countries that replied to the sixth survey maintained the death penalty in their criminal codes for a wider range of offences than culpable homicide (capital murder), often for treason and military offences, but sometimes far wider than that. For example, the death penalty extends to drug-related offences in Bahrain. Belarus reported that it can be imposed not only for crimes against the person and crimes against the State, but also for "other offences". Chile stated that it is available for the most serious contraventions of its anti-terrorist legislation. Myanmar retains the death penalty for drug-related offences and crimes against the State. In Iraq and Rwanda the death penalty extends to certain crimes against property and in Iraq and Thailand to drug-related offences. In its reply, the United States stated that capital punishment was always discretionary and limited to the most serious crimes involving aggravated homicide or other similarly serious harm. Thus, under federal law capital punishment could be imposed for certain very serious and military and federal crimes (such as espionage, treason or operating an extremely large narcotics enterprise) that caused very serious harm and were committed under aggravated circumstances.

89. While former Soviet republics such as Kazakhstan (where the death penalty is discretionary for crimes against the person, crimes against property, the encroachment on the life of a person who carries out justice or a preliminary investigation and crimes against the State) that have yet to abolish the death penalty have taken action to reduce the number of capital crimes,[41] many retentionist countries have exhibited a tendency in the opposite direction. They have increased the range of crimes for which capital punishment may be imposed, rather than followed the expressed United Nations policy of progressively restricting the number of offences.

90. In 1985, a United Nations survey of penalties for drug trafficking revealed that the death penalty could be imposed in 22 countries and areas for that type of offence.[42] By 1995, the number had risen to at least 26 and, by the end of 2000, to at least 34. With the exception of Cuba, the Democratic Republic of the Congo, Guyana and the United States (federal law), these countries and areas are in the Middle East, North Africa or the Asian and Pacific region.[43] In a few of these countries and areas, the death penalty can be imposed for possession of quite small amounts of an illegal drug with intent to supply. For example, it is a mandatory capital offence in Singapore to illegally traffic in, import or export heroin of more than 15 grams, morphine of more than 30 grams, cannabis resin of more than 200 grams and cannabis of more than 500 grams. In 1998, Singapore made the death penalty mandatory for trafficking in more than 250 grams of crystal methamphetamine.[44] In Malaysia, in November 2000, two men were executed for trafficking in 123 and 132 grams of heroin respectively. Under Malaysian law anyone found in possession of more than 15 grams of heroin is presumed, unless the contrary can be proven, to be trafficking in that drug and therefore liable to a mandatory death sentence.[45] In contrast, under federal law of the United States, the death penalty under the Violent Crime Control Act of 1994 has been reserved for those involved in large-scale drugs offences as part of a "continuing criminal enterprise".

91. Another 25 countries, at a minimum, retain the death penalty for sexual offences, mostly for rape, especially aggravated rapes such as that of a child. In 1997, Pakistan extended the death penalty to apply to gang rape.[46] Homosexual acts with violence (homosexual rape) is a capital offence in Cuba (see E/CN.4/1998/82, annex). The laws of some States, however, are even wider ranging. In the Islamic Republic of Iran, a death sentence has been imposed on a woman for reportedly engaging in sexual relations outside marriage (see E/CN.4/1999/39/Add.1, para. 103). It can also be imposed in the Sudan for recidivist prostitution, illicit sex and conviction for committing a third homosexual act.[47]

92. No fewer than eight States provide the death penalty for kidnapping.[48] In 1996, kidnapping and trafficking in women and children was made a capital offence in Bangladesh.[49] A year earlier, the Guatemalan Congress approved the extension of the death penalty to anyone convicted of kidnapping, including accomplices who threaten to kill victims of kidnapping (see E/CN.4/1996/4 and Corr.1, para. 210).

93. The number of countries that have the death penalty for armed robbery has increased and is now at least 12.[50] Since the death penalty for certain economic offences has been abolished in most of the States that were formerly part of the Union of Soviet Socialist Republics, including the Russian Federation, there are probably now no more than 11 countries that retain it for offences such as aggravated theft, smuggling, speculation, fraud and embezzlement by public officials.[51]

94. It appears that many, but not all, retentionist States maintain the death penalty for military offences, and in some countries it can be imposed for various offences committed against the State in peacetime, such as terrorism, sabotage, undermining national security and treason. For example, Japan provided the following list of offences: leading an insurrection, inducement of foreign aggression, assisting an enemy, arson to an inhabited structure, destruction by explosives, damage to an inhabited structure by means of flooding, and use of explosives. Apart from several of the former Soviet republics, there is little indication that there has been any reduction in the number of retentionist countries that have capital offences of this kind; if anything, the reverse is probably true.

95. As far as is known, religious dissent in the form of blasphemy or apostasy remains a capital offence in the Islamic Republic of Iran, the Libyan Arab Jamahiriya, Pakistan, Saudi Arabia and the Sudan. Furthermore, there are several countries and areas where the number of capital crimes remains relatively high: in particular, China,[52] Cuba, the Islamic Republic of Iran, Iraq, the Philippines, Saudi Arabia, the Sudan and Taiwan Province of China.[53]

96. In her interim report on extrajudicial, summary or arbitrary executions, the Special Rapporteur to the Commission on Human Rights stated that the death penalty should under no circumstances be mandatory (A/55/288, para. 34). Even though a mandatory death sentence can later be bypassed by commutation, a mandatory death penalty can make it difficult if not impossible for the court to take into account a variety of mitigating or extenuating circumstances that might remove a particular offence from the category of most serious crimes. Information on the extent to which

capital punishment was mandatory for certain offences was again limited by the small number of retentionist and de facto abolitionist States that replied to the sixth survey. In Barbados, the Comoros, Lebanon and Turkey, it was mandatory for capital murder. According to the reply from Japan, the Penal Code demanded the death penalty for an offence of conspiring with a foreign State to cause the use of armed forces against Japan, but a judge could reduce the death penalty to another sentence where legal causes existed or where the judge considered the death penalty to be too severe for the case. It appears from Bahrain's reply that capital punishment is mandatory for the premeditated murder of a police officer. The death penalty is mandatory in Antigua and Barbuda for treason and certain crimes against the State, but discretionary for murder. In the Comoros, the death penalty is mandatory for offences against the State, treason and espionage; in Indonesia for crimes against the person and drug-related offences; in Lebanon for treason and collaboration with the enemy; in Morocco for crimes against the person, crimes against the State and military offences; in Myanmar (according to other sources) it is mandatory for premeditated murder and high treason, but discretionary for drug manufacturing and trafficking; and in Turkey it is mandatory for certain terrorist offences, other crimes against the State, military offences, as well as for murder. Rwanda stated that the death penalty was always discretionary, although other sources suggest it is mandatory for cases connected with organizing, inciting or participating in genocide. Although Togo had not carried out any executions since 1979 and did not impose death sentences during the period under review, the position in law was still that capital punishment was mandatory for all offences for which it was provided in peacetime and wartime. How this was achieved, however, is unclear, as the response of the Government of Togo, at the same time, indicated that during the period under review no persons had sought a pardon, a commutation of sentence or a reprieve against capital punishment. Several other countries and areas are known to maintain mandatory capital punishment for certain crimes, among them Grenada and Zimbabwe for murder; Kuwait, Taiwan Province of China and Thailand for various drug-related offences; Guatemala and the Philippines for the rape of a child; and in the latter country in several other defined circumstances (see E/CN.4/1998/82 and Corr.1, chap. IV).

B. Second safeguard

97. No information was forthcoming to suggest that any of the responding countries had applied the death penalty retroactively or that their laws permitted them to do so. From other sources, however, it appears that, under Decree No. 115 of 1994, Iraq introduced the death penalty in a form that could be applied retroactively to persons who had evaded military service for the third time. Bahrain, Barbados, Belarus, Indonesia, Japan, Kazakhstan, the Niger, Rwanda, Thailand and Turkey indicated that they would allow an alternative penalty to be imposed if the death penalty were subsequently abolished. Lebanon and Chile indicated that, on the contrary, they would not allow such an alternative penalty.

C. Third safeguard

1. Persons below 18 years of age

98. Four of the responding retentionist and de facto abolitionist countries, Chile, Indonesia, Togo and the United States, had provision for imposing death sentences on persons under 18 years of age at the time when they committed the offence. Only in Indonesia is no age limit set for the use of the death penalty. In Togo the minimum age is 16 years but, as noted above, it did not impose any death sentences during the period of the survey. The minimum age is also 16 in Chile, although no one under the age of 18 has been executed for many years. The Constitution of the United States prohibits the imposition of capital punishment on persons who were below the age of 16 at the time of committing the offence. Fourteen states and federal law set the lower age limit at 18, but 4 states have a minimum age of 17 and 13 states a minimum of age 16, 7 States do not specify a lower age limit.[54] The United States has not ratified the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) and, in June 1992 when it ratified the International Covenant on Civil and Political Rights, it entered a reservation with respect to article 6, paragraph 5, which bans the imposition of the death penalty on a person who committed the crime when below 18 years of age. The United States has not embraced this safeguard and withdrawn its reservation to the International Covenant. At the end of 1999, the United States Supreme Court, in the case of

Domingues v. *Nevada*, decided, after hearing argument from the United States Solicitor General, not to consider the issue of whether the execution of a person who was 16 at the time of the offence was a violation of customary international law and United States treaty obligations.[55]

99. Since the beginning of 1994, several countries have brought themselves into line with this safeguard, namely, Barbados, China, Yemen and Zimbabwe. They were joined by Pakistan when the Juvenile Justice System Ordinance of July 2000 abolished the death penalty for persons under the age of 18 at the time of the offence. However it appears that this was not retroactively applied to those already under sentence of death.[56] There appear to be at least 14 countries[57] that have ratified the Convention on the Rights of the Child without reservation but, as far as is known, have not yet amended their laws to exclude the imposition of the death penalty on persons who committed the capital offence when under 18 years of age. During the period under review, it was reported that four countries had executed at least one person who was under the age of 18 at the time they committed the offence. They were (the number executed in the seven years from 1994 to 2000 is in brackets): Islamic Republic of Iran (2), Nigeria (1), Pakistan (1)[58] and the United States (8: 4 in Texas, 1 in Oklahoma and 3 in Virginia). At the end of October 2000, there were 83 prisoners awaiting execution in 16 states of the United States for offences they committed when they were 16 or 17 years of age. One third of them were held in the State of Texas.[59] In 2000, the Democratic Republic of the Congo executed a 14-year-old within 30 minutes of his conviction for murder.[60]

100. In it resolution 1999/4, the Subcommission on the Promotion and Protection of Human Rights condemned unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of commission of the offence and called upon all States that retained the death penalty for juvenile offenders to commit themselves to abolishing the death penalty for such persons. The following year, in its resolution 2000/17, the Subcommission urged the Commission on Human Rights to adopt the decision that the imposition of the death penalty on persons aged under 18 years at the time of offence is in contravention of customary international law.

2. Maximum age

101. One retentionist State that responded to the sixth survey reported that there was a maximum age beyond which persons would not be executed, namely, Kazakhstan, where the maximum age is set at 65 years. A few other countries have exempted the elderly, among them, the Russian Federation (65 years), the Philippines and the Sudan (70 years) and Guatemala and Mongolia (60 years). Executions of elderly persons were rarely reported, but an individual in prison and aged 70 years was known to have been executed in Japan in 1995. At the end of 1998 the oldest person on death row in Japan awaiting execution was aged 83 and the oldest in the United States was 84.

3. Pregnant women or new mothers

102. Chile and Japan were the only retentionist and de facto abolitionist countries from which a reply was received to report that the death penalty could be imposed on a pregnant individual although it would be normal for the execution to be stayed. A minority of retentionist countries that did not reply also reserve the authority to sentence pregnant women to death and to execute them at varying periods, ranging from months to several years, after delivery of the child. The replies from Barbados, Cameroon, Lebanon, the Niger, Rwanda, Togo and Turkey indicated that there was no legal bar to the execution of new mothers.

103. There have been no executions of pregnant women recorded anywhere in the world in recent years, although it was reported that a death sentence was imposed in the Democratic Republic of the Congo in 1998 (see E/CN.4/1999/39/Add.1, para. 68). It is not known whether any adult female with recently born children was executed in the period 1994-2000.

104. Females are completely exempted from capital punishment in a few countries, such as the Russian Federation and Uzbekistan (since 1995), and in some others, such as Cuba, a female has never been executed. Death sentences were, however, imposed on adult females in Japan and Thailand and in several other retentionist countries. A female was executed in Rwanda, an adult female and her spouse were executed in Japan in 1997 and Qatar executed an adult female in 2000. In the United States, 53 adult females were on death row at the end of October 2000 and, as noted above (para. 63), the execution of an adult female, by the State of Texas in 1998, was the first such execution

in the country since 1984. Since then, another four adult females have been executed in the United States, the most recent being put to death in January 2001. It appears to be even more common to execute women in China and Saudi Arabia, where 14 were executed between 1994 and 1999.

4. The insane and persons suffering from mental retardation or extremely limited mental competence

105. Among the responding retentionist and de facto abolitionist countries, only Togo indicated that the law would allow death sentences to be imposed on persons who were insane or suffering from mental retardation. Other sources suggest that most, if not all, other countries provide for a defence of insanity in capital cases. Moreover, as in Japan, if a person under sentence of death becomes insane, he or she will not be executed while in that mental state. Yet, in practice, whether or not persons who are mentally ill or who suffer from extremely limited mental competence escape the death penalty depends a great deal upon the availability of expert psychiatric testimony to use in their defence. Thus, it has been accepted by the Judicial Committee of the Privy Council in London that the shortage of qualified forensic psychiatrists in certain Caribbean countries has meant that the mental health of defendants in murder cases is not routinely assessed, either on behalf of the State or by independent psychiatrists for the defence.[61] This must also be the case in other regions where there is a shortage of such experts, especially when combined with a shortage of financial resources available to the defence to obtain an independent mental assessment.

106. From the beginning of 1994 until the end of 2000, at least 15 persons who were mentally retarded to some degree have been executed in the United States, the most recent in September 2000. The number executed each year, however, appears to have been in decline since the beginning of 1996. This may indicate that the growing opposition in the United States to the execution of the mentally retarded may have had a salutary effect.[62] It is now prohibited by 13 of the 38 retentionist states in that country.[63]

D. Fourth safeguard

107. Respondent retentionist and de facto abolitionist States replying to the sixth survey reported that they abided by the fourth safeguard and that no cases of an innocent person being executed had come to light during the period 1994-1998. Yet observation of this safeguard in any State that retains the death penalty is an aspiration rather than a reality in all cases. For example, although the United States states that proof beyond all reasonable doubt to establish guilt of all capital crimes is required, the appeals procedure in the United States has led to a substantial number of persons being removed from death row. Between 1994 and 1999 it was officially reported that an average of 87 death sentences had been overturned or removed by appeals courts; the conviction had been quashed entirely on average 34 times each year.[64] But these figures do not cover all states with capital punishment nor can they be used to estimate the outcome of all cases sentenced to death. In June 2000, a major study showed, for the first time, the true scale of "serious reversible errors" in death penalty convictions in the United States. Entitled *A Broken System: Error Rates in Capital Cases, 1973-1995*,[65] it followed the fate of all persons sentenced to death over a period of 23 years. It transpired that in 68 per cent of cases that had reached the final third stage of state and federal appeal during that period (a process that on average took nine years), an error had been found sufficient to overturn the original capital conviction. The study identified the most common causes of such errors. Thirty-seven per cent of them were due to "egregiously incompetent defence lawyers"; 19 per cent to "suppression of evidence by police and prosecutors"; and a further 20 per cent to "faulty instructions to jurors". Four fifths of those who had their death sentences overturned were not sentenced to death when the errors were rectified at a retrial and 7 per cent were found to be innocent of the capital crime. The conclusion was that only 11 per cent of those originally sentenced to death were judged to deserve such a sentence when the errors of the original trial were corrected.

108. Concerns have been regularly voiced in the United States that innocent persons remain under sentence of death and that some are eventually executed. In 1999 alone, eight condemned prisoners were released from United States death rows after

evidence of their innocence emerged and three more in the first three months of 2000, making a total of 95 since 1973.[66] In the State of Illinois, where 12 prisoners had been released from death row since 1994 because of doubts of their guilt, a further case, in 1999, made national headlines. Thanks only to the research carried out by students of journalism, a prisoner was found to be innocent only five days before his execution was to be carried out. So concerned was the Governor of Illinois, a supporter of capital punishment, that he announced a moratorium on executions in the state until an enquiry into the administration of the death penalty in that state had reported.[67] These concerns led early in 2000 to the introduction of a Senate bill entitled the Innocence Protection Act.

109. There have also been reports during the period 1994-1998 from several other countries of persons being released from prison, sometimes after many years in custody, on the grounds of their innocence. Such reports have come from Belize, China, Japan, Malawi, Malaysia, Pakistan, Papua New Guinea, the Philippines, Trinidad and Tobago and Turkey (although the latter stated that this was not the case in its response to the survey). Furthermore, convictions that had resulted in executions have been identified and some of them posthumously overturned in the Russian Federation, the United Kingdom and Uzbekistan.[68]

110. If a large number of legal and factual errors made at trials for capital offences are found by appeals courts in the United States, where the scope of capital punishment is narrowly drawn and the legal system is well developed, it may be the case that such errors will also occur in many of the other retentionist countries.

E. Fifth safeguard

111. All of the States that responded to questions concerned with the various aspects of the fifth safeguard gave positive answers and confirmed that adequate legal assistance was available at all stages of the criminal process (with the exception of Antigua and Barbuda, which stated that it was available only at some stages). Bahrain, Barbados, the Comoros, Kazakhstan, Thailand and Turkey stated that provision of counsel was above and beyond that afforded in non-capital cases. For example, Bahrain stated that if the defendant was unable to retain a lawyer, the Government would assign one to him, at the expense of the Ministry of Justice, so as to provide him with legal advice at all stages of the proceedings. Belarus, Chile, Japan, Lebanon, Morocco, Rwanda and Togo stated that this was not, however, the practice. Governments were not asked specifically about the form of detention or imprisonment awaiting trial in capital cases or about the facilities for interpretation or translation. Consideration should be given to investigating those matters in the next quinquennial survey. The United States reply stated that reasonable notice was provided before trial, adequate legal counsel and other necessary resources were available, as was the opportunity to prepare an adequate defence at trial before a fair and impartial court. The findings of the thorough study by the Columbia Law School team, described in paragraph 107 above, suggests that there is a considerable gap between this formal description of safeguards for defendants and the reality of the criminal process.

112. Mexico drew attention to the Advisory Opinion of the Inter-American Court of Human Rights of 1 October 1999, which it had requested, concerning the right to information on consular assistance within the framework of guarantees of due legal process. The Opinion was concerned with the fact that foreign nationals had been executed in the United States even though they had not been informed when arrested of their right to consular assistance, contrary to article 36 of the Vienna Convention on Consular Relations,[69] ratified by the United States in 1969. According to the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, this is also alleged to have occurred in Saudi Arabia (see E/CN.4/1999/39/Add.1, para. 213). The Government of Germany is currently involved in an action before the International Court of Justice against the United States in respect of two of its citizens, Karl and Walter LeGrand. They were executed in the United States early in 1999 despite the fact that they had not been informed of their right at the time of their arrest to obtain advice from their consulate and in the face of an opinion from the International Court that the execution should be stayed pending the final decision of the proceedings before it brought by Germany.

113. During the period under review, allegations were made that death sentences had been imposed in several countries and territories following trials that did not

conform to international standards. Many of those allegations concerned the trial of civilians and soldiers before special tribunals or military courts set up to deal with civil unrest. In that respect, the following countries have been cited by the Special Rapporteur on extrajudicial, summary or arbitrary executions or by the Human Rights Committee: Algeria, Democratic Republic of the Congo, Egypt, Iraq, Kuwait, Nigeria, Pakistan and Sierra Leone.[70] Other concerns have focused on the powers given to Islamic courts to impose death sentences under a kind of summary jurisdiction, such as in Chechnya, and in Afghanistan, where many of the judges are said to be virtually untrained in law (see E/CN.4/1998/68, para. 85). In Somalia, indigenous, local, tribal or clan courts have also sentenced persons to death. Furthermore, it has been reported that trials have taken place where the defendant has had inadequate legal representation, representation provided too late to provide adequate legal defence or no representation at all. The Special Rapporteur has expressed concern that trials have failed to conform to international standards of fairness in one or more of those respects in the following countries and areas: Afghanistan, China (at least prior to the reform of its criminal procedure in 1997), Palestine, Rwanda, Saudi Arabia and Yemen.[71] It is widely accepted that legal aid provisions, and therefore the standard of legal defence available in capital cases, is inadequate in many of the Caribbean States that retain the death penalty as well as in parts of the United States.[72]

114. All of the responding countries and areas stated that there had been no instances where persons had been executed without or outside judicial process. This cannot be taken to be the situation in the world at large, as testified to by the Special Rapporteur. During the period 1994-1998, a dreadful catalogue was revealed of extrajudicial executions and disappearances, sometimes on a genocidal scale, in far too many countries of the world.

F. Sixth safeguard

115. Among the 19 retentionist and de facto abolitionist countries that provided information concerning the sixth safeguard, Bahrain, Cameroon, Chile, Indonesia, Iraq, Kazakhstan, Rwanda, Thailand and Turkey stated that they provided for a mandatory appeal to a higher court whenever a death sentence was imposed on questions of law, procedure, fact and (except for genocide in Rwanda) the severity of penalty. The United States stated that its laws provided for meaningful and exhaustive review on appeal before a sentence of death could be carried out. In Japan, appeals on grounds of law, fact, procedure and severity can be exercised by the defendant right up to the Supreme Court, but it is not mandatory in law to provide for an appeal. In the period 1994-1998, 234 appeals against the death penalty were allowed in Belarus, 133 in Thailand, 5 in Japan, 1 in Bahrain and 1 in Morocco; no statistics were supplied by the other countries. The replies from Antigua and Barbuda, Lebanon and Togo indicated that persons sentenced to death had an automatic right of appeal, on grounds of law and procedure only. Appeals, as in Japan, were not mandatory: in other words, the appeals court would not consider the case if the prisoner did not exercise his or her right to appeal or withdrew the appeal. Morocco stated that it had a mandatory but not automatic right of appeal on grounds of law only. Barbados, Belarus and the Niger replied that there was a right of appeal to a court of higher jurisdiction but this was neither automatic nor mandatory. In practice, final appeals from death sentences in Barbados were heard by the Judicial Committee of the Privy Council in London. In the Comoros, where capital cases were tried at a Special Court of Assize, there were no provisions for appeal because the Court of Cassation was not operating, apparently because no judges had yet been appointed by the National Assembly. In 1998, the Government of the Islamic Republic of Iran stated that anyone sentenced to death had the right to appeal to a court of higher jurisdiction, including the Supreme Court, but that the sentence would be carried out (a) if no protest or appeal had been made within the legal time limit of 30 days; (b) if the verdict were confirmed by the Supreme Court; or (c) if the request for appeal had been rejected or the appeal had been rejected in a final judgement (see E/CN.4/1999/52/Add.1, sect. I).

116. It appears from the concern expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions and by the Human Rights Committee that military or security courts operate in some countries without granting the full rights of appeal in capital cases that would be available to those convicted in ordinary criminal courts. This is said to have been the case during the survey period in the

Central African Republic, Iraq, Nigeria and Sierra Leone.[73] Non-governmental organizations have expressed similar concerns about several other countries.

117. The responding retentionist and de facto abolitionist countries and areas all stated that there was a mandatory waiting period between the time that a person was sentenced to death and the time of the imposition of the death penalty so that there would be adequate time to prepare the case for appeal, with legal assistance provided, or to exhaust the right to seek pardon. No information on the length of the waiting period was asked for or received, except from Japan, which stated that 14 days was allowed.

118. Reports relating to several other countries and areas indicate that, despite the existence of formal appeal procedures, persons have been executed within days of their conviction. This suggests that the procedural protections required to ensure an exhaustive appeals process were not in place. The speed at which reported executions have followed some convictions in a number of countries has aroused the concern of non-governmental organizations. During the period under review, there were many reports of executions taking place in China soon after the trial. However, the new Criminal Law of 1997 has made it mandatory for all death sentences to be submitted to the Supreme People's Court for verification and approval (except from those which had been decided by the Court in the first instance). Nevertheless, in practice, the Supreme People's Court can delegate this function to a high court.[74]

G. Seventh safeguard

119. All 17 retentionist and de facto abolitionist countries and territories that responded to this section of the questionnaire stated that, during the period under review, all persons sentenced to death had the right to seek a pardon. In Antigua and Barbuda, Bahrain, Barbados, Belarus, Chile, Kazakhstan, Lebanon, Morocco and Thailand, they also had the right to seek a commutation or reprieve of the sentence, but not in the Comoros, nor in the Niger or Togo (neither of which actually passed death sentences). Reprieve of the sentence was not permitted in Iraq and Rwanda and in Chile only for juveniles and pregnant women. In its response, Turkey stated that the right to seek pardon was limited by the President's power to remit all or part of the sentence on grounds of chronic illness, disability or old age.

120. During the period 1994-1998, 183 prisoners in Belarus sought commutation or a pardon from the President and 25 were granted. In Thailand 133 prisoners sought a pardon (including commutation of the sentence) and 50 were granted. In addition, 75 prisoners under sentence of death benefited from an amnesty granted by the King in 1996. Seventy-seven prisoners in Morocco and 40 in Rwanda sought a pardon, but none were granted in either country. In Cameroon pardon was sought in seven cases but information on how many were granted was not provided. The Comoros granted commutation of sentence to two of the four prisoners sentenced to death. In Barbados, 2 of the 15 persons convicted of murder had their death sentence commuted to life imprisonment; a further 11 were ordered to be retried after an appeal to the Judicial Committee of the Privy Council in London (the other 2 died in prison). No pardons or commutations were granted by the Amir of Bahrain. In its reply, Japan stated that no prisoners had sought a pardon or a reprieve and the only one who had sought commutation of sentence did not have it granted. Statistics were not available for either Kazakhstan or Turkey. The United States, in its reply, stated that the law, in both retentionist states and the federal jurisdiction, required individualized consideration of each offender and each offence on application for executive clemency.

121. There are few data available from other countries and areas on the extent to which powers to pardon, commute or reprieve are exercised. In some countries, however, it is clear that they are very rarely used in favour of the condemned prisoner. For example, in the United States, only six persons under sentence of death were granted a commutation of their sentence during the period 1994-1998.[75] Five more prisoners were granted clemency in 1999 and two in 2000.[76] In the State of Texas, for example, the single commutation recommended by the Pardons Board to the Governor in 1998 was the first in 17 years.[77] It has also been reported that clemency has rarely been granted in Indonesia (see E/CN.4/1996/4 and Corr.1, para. 244) and that the commutation of a death sentence by the President of Singapore in 1998 was only the fifth to be granted in 35 years.[78]

122. The procedures in most countries pertaining to the exercise of commutation, reprieve or pardon do not often follow all the rules of due process, nor are they usually subject to review. In that regard the recent decision of the Judicial Committee of the Privy Council in London in the case of *Neville Lewis and Others* v. *Attorney-General of Jamaica and Another*[79] is of particular significance. It held that the exercise of the prerogative of mercy should, in view of Jamaica's international obligations, follow procedures that were fair and proper (such as disclosure to the applicant of all materials to go before the review committee) and amenable to judicial review.

123. In countries where Islamic law prevails, the system of *diya* operates in place of commutation. The relatives of the victim are given the choice between execution and reprieve of the offender, with or without receiving compensation. It would be helpful if such countries were to furnish statistical information on the extent to which *diya* is accepted in lieu of execution.

H. Eighth safeguard

124. Japan stated that its law did not prohibit a person being executed while in the middle of pardon proceedings. Several retentionist Caribbean countries have argued that the length of time taken for appeals to be heard and deliberated on by the Human Rights Committee and the Inter-American Commission on Human Rights has been excessive, in effect, barring them from enforcing the death penalty. This is because the decision of the Judicial Committee of the Privy Council in the case of *Pratt and Morgan* v. *Attorney-General of Jamaica* held that it would constitute inhumane or degrading punishment or other treatment to prolong the period of time spent under the threat of execution beyond five years. The United States reported that it always provides for stays of execution pending final judgement on appeal and final decision on clemency.

125. For this reason, in May 1998, Trinidad and Tobago withdrew its accession to the Optional Protocol to the International Covenant on Civil and Political Rights as well as the American Convention on Human Rights. On the same day, it acceded again to the International Covenant with reservations to the effect that the Human Rights Committee should not be competent to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith.[80] The Human Rights Committee held in the case of Rawle Kennedy, an alleged victim of a human rights violation connected with the death penalty in Trinidad and Tobago, that it could not accept a reservation that singled out a certain group of individuals for lesser protection than that enjoyed by the rest of the population and that this constituted a discrimination that ran counter to some of the basic principles embodied in the Covenant and its Protocols; for this reason the reservation could not be deemed compatible with the object and purpose of the Optional Protocol.

126. Nevertheless, Trinidad and Tobago carried out an execution in July 1999 while the prisoner's petition was still pending before the Inter-American Commission on Human Rights.[81] Similarly, early in 2000, an adult male was executed in the Bahamas despite the fact that a petition was pending before the same body. While Jamaica continues to recognize the competence of the Inter-American Commission on Human Rights, it has unilaterally set a time limit of six months for the Commission to consider appeals against the death sentence once all domestic avenues of appeal and commutation have been exhausted (see also para. 77).

127. These developments clearly raise critical questions for the implementation of a safeguard that is intended to ensure that all possibilities of appeal and reconsideration, national and international, should be pursued to a final decision before capital punishment is enforced.

I. Ninth safeguard

128. The method of execution in three retentionist and de facto abolitionist reporting countries was hanging (Barbados, Japan and Lebanon), and in six others (Bahrain, Cameroon, Comoros, Indonesia, Rwanda and Thailand), shooting by firing squad. In Iraq executions can be carried out by either hanging or firing squad. Kazakhstan, Togo and Turkey provided no information. According to the Government of Thailand's web site, the Interior Ministry has agreed that executions should in future be carried out by lethal injection and has

passed the issue on to a government committee to draft a bill. That bill was rejected by the Thai Parliament on grounds of expense in providing the equipment. But recently (2001), the Cabinet again approved again the introduction of lethal injection. In the United States, 34 of the 38 states that retain the death penalty use lethal injection, only 4 retain electrocution as the only method.[82] However, the adoption of a "medical means" of execution has raised the question of the extent to which doctors should be involved in the execution process. At the 52nd World Medical Association Assembly, held in October 2000, a resolution adopted at the 34th Assembly was amended to declare that it was unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process.[83]

129. In the Comoros, Lebanon and Rwanda, at least one execution in the period 1994-1998 was carried out in public. According to the reply from Lebanon, owing to the horrific nature of the crime, public execution was used as a deterrent. Rwanda stated that public executions had taken place in the period under review, but information whether all of the 22 persons executed in Rwanda between 1994 and 1998 were executed publicly was not provided. Despite this, when asked whether the procedure for imposing the death penalty was carried out so as to inflict the minimum possible suffering on the sentenced person, Lebanon and Rwanda replied in the affirmative. By contrast, neither the Comoros nor Thailand, where executions are by shooting, made this claim. Cameroon also reported that executions were carried out in a public place.

130. According to other reports, executions in public or executions broadcast on television have taken place during the period under review in at least 11 other countries or areas.[84] Such executions have been condemned by the Human Rights Committee as incompatible with human dignity (CCPR/C/79/Add.65, para. 16). In several countries, members of the public have been involved in carrying out executions, mostly by stoning. Reports of public rallies in China, where persons convicted of capital offences were paraded and humiliated prior to execution, continued to come from Amnesty International during 1998.[85]

131. International norms have been developing on the question of the so-called "death row phenomenon". As mentioned in paragraph 124 above, the Judicial Committee of the Privy Council has established five years as the maximum period for which a person should be held under sentence of death. During the period under review, however, several countries executed prisoners after much longer periods. The average time spent on death row of prisoners executed in the United States in the period 1994-1998 was 10 years and 9 months.[86] Fifteen years on death row was not regarded by a Federal Court of Appeals in 1998 as a situation that even began to approach a constitutional violation of cruel and unusual punishment prohibited by the Eighth Amendment.[87] In Japan, which stated that the procedure was carried out so as to inflict the minimum possible suffering on the sentenced person, it appears common for executions to take place at least a decade after conviction. One person was reported to have been executed in 1997, 28 years after conviction. There were also reports of prisoners being detained for long periods under sentence of death in Ghana and Indonesia. The suffering of prisoners kept, often in very restricted circumstances and under conditions of mortal uncertainty, seems prima facie to violate the spirit of the ninth safeguard.

132. The questionnaire for the sixth survey did not include items concerning the conditions under which persons sentenced to death are detained and did not enquire into the length of time persons remained under sentence of death prior to execution. In view of Economic and Social Council resolution 1996/15, consideration should be given to investigating those questions when planning the seventh quinquennial survey.

VII. Information and research

133. Governments, retentionist and abolitionist alike, were requested to complete the final section of the questionnaire, which dealt with a number of issues concerning knowledge of developments connected with the international debate on the use of the death penalty, the promotion and value of research, the raising of public awareness of the issue and the extent of technical cooperation on matters relating to capital punishment. Fourteen of the 63 countries did not respond to any questions in this section, including 2 of the retentionist States, Kazakhstan, which stated that such questions were not part of the responsibilities of the Ministry of the Interior, and the United States.

Bulgaria, which became abolitionist for all crimes in 1998, also did not answer any of these questions.

134. Thirty-seven countries stated that, during the survey period 1994-1998, they had made efforts to keep abreast of the international debate on the death penalty and/or followed the work of United Nations bodies on the subject. They included 13 of the retentionist and de facto abolitionist countries (Antigua and Barbuda, Bahrain, Barbados, Belarus, Chile, Iraq, Japan, Morocco, Myanmar, Rwanda, Thailand, Togo and Turkey), but not the Comoros, Indonesia, Lebanon and the Niger. Nevertheless, the Comoros did report that it kept track of developments and actions in other countries regarding the question of the use of the death penalty.

135. Eighteen countries stated that government or other efforts had been made to increase the availability of information and raise awareness of the use of the death penalty; these countries were Antigua and Barbuda, Armenia, Bahrain, Barbados, Belarus, Belgium, Brazil, Iceland, Iraq, Italy, Japan, Lithuania (by means of seminars), Malta, Mozambique, Poland, Rwanda, Spain and Thailand. The reply from Belgium specifically pointed to the influence of an academic article on the death penalty in the journal *Panopticon*.[88] Thailand's efforts include a government web site that contains both information about and discussion of the use of capital punishment. Armenia, Barbados, Italy and Mozambique stated that national campaigns had been launched in their countries to raise public awareness of the issues involved.

136. Only Mozambique and Thailand reported that their countries had received technical cooperation and only Mozambique stated that it had provided technical cooperation on matters concerning the use of the death penalty. Not one State responded affirmatively to the question: "Did your country require technical cooperation in specific areas concerning the use of the death penalty in which United Nations bodies might be of assistance?"

137. Twenty-one of the 63 countries that replied to the survey reported that independent or academic research on the question of the use of the death penalty had been carried out during the survey period on a fairly regular basis: Antigua and Barbuda, Argentina, Armenia, Australia, Bahrain, Brazil, Canada, Colombia, Iraq, Italy, Japan, Lithuania, Mexico, Morocco, Myanmar, Peru, Poland, Slovakia, Slovenia, Spain and Togo. Only Italy, Japan and Lithuania indicated that such research had been government-sponsored. Belarus stated that a referendum had been held, but no details were given. Lithuania stated that the Government had undertaken a year-long project with the assistance of the Council of Europe, entitled "The death penalty in Lithuania: from retentionist public support to abolitionist well-informed opinion", and had sponsored public opinion surveys. Those surveys had revealed that public opinion was opposed to abolition, yet it was nevertheless put into effect in 1998. The Japanese response cited public opinion surveys of people aged 20 years or over conducted by the Public Relations Office of the Prime Minister's Office in 1994 and 1999. This showed no trend towards favouring abolition. In 1994, 13.6 per cent had agreed with the statement "the death penalty should be abolished in all cases" and 73.8 per cent that "the death penalty is unavoidable in some cases". In 1999, the figures were 8.8 per cent and 79.3 per cent respectively. Apart from Lithuania, only Armenia, Slovenia and Spain reported authoritative and conclusive research findings that justified either the abolition or the retention of the death penalty. Armenia gave no details, Slovenia cited a collection of essays in favour of the abolition of the death penalty[89] and Spain simply reported that the textbooks commonly used in law faculties took the abolitionist line. Of course it very much depends on what is meant by research. It is clear that, apart from some public opinion surveys, what falls under this heading is mostly the kind of gathering together of information that characterizes the present report. This is mainly because most of the countries with the social science research capacity for more sophisticated independent enquiries into the use and effects of capital punishment are already abolitionist. As far as is known, among retentionist countries, it is only in the United States that such investigations are being conducted at present.[90] There is obviously a need for social scientists in other retentionist States to have made available to them the necessary resources and the access to data required to provide the knowledge base through which policy and practice in relation to the application of the death penalty can be properly assessed.

138. The questionnaire invited Governments to suggest the type of work that might be undertaken at the subregional, regional and international levels to assist States with regard to the question of the use of

the death penalty. Fiji replied that research should be undertaken in the Pacific Island region on public opinion. Indonesia suggested that subregional meetings on the use of the death penalty should be held and Uruguay recommended regional studies on the application of the death penalty and current trends in the direction of reinstatement. Slovakia suggested that countries should be provided with a list of nations where the death penalty had actually been abolished, along with data that demonstrated that abolition did not affect crime rates. Thailand stated that it needed more information about the arguments for and against the death penalty, because of the attitude of the public towards the issue. The Government of Italy invited attention to the fact that Italy had been in the frontline of the debate at the General Assembly and the Commission on Human Rights, pressing for a moratorium on executions as an intermediate goal in the ongoing campaign for abolition. Mexico made a series of suggestions related to its concern about the non-enforcement of article 36 of the Vienna Convention on Consular Relations (see para. 112 above) and its intention to promote the resolutions of the Commission on Human Rights concerning the abolition of the death penalty. It suggested that the Advisory Opinion of the Inter-American Court of Human Rights on consular assistance should be circulated and that there should be a campaign for the abolition of the death penalty, to be headed by the Office of the United Nations High Commissioner for Human Rights. This would involve representations to obtain the commutation of capital sentences and the promotion of internationally recognized safeguards for the protection of the rights of those sentenced to death, through consular channels and the convening of subregional, regional and international seminars. Mexico suggested that States that had received extradition requests should explicitly reserve the right to refuse them if sufficient guarantees that the death penalty would not be imposed were not provided by competent authorities of the requesting States. In contrast, Japan stated that, basically, although it was necessary to refer to the trends and experiences of other countries, after having given careful consideration to national sentiment, the circumstances surrounding the crimes and to criminal policy, it considered that the issue of retention or abolition of the death penalty should be left to the independent decision of each country.

VIII. Concluding remarks

139. It must be acknowledged that a relatively small number of States took part in the Secretary-General's sixth survey, a third of the Members of the United Nations. Only 13 of the 71 States retaining and enforcing capital punishment at the end of the survey period responded to the Secretary-General's enquiry, and then not always in full. Of the 36 countries that retained the death penalty but had not executed a person for at least 10 years, only 9 replied. While 61 per cent of abolitionist States responded to the fifth survey, only 47 per cent provided information for the sixth.

140. The report of the Secretary-General on the fifth quinquennial survey concluded that the pace of change in the quinquennium beginning in 1989 had been quite remarkable: 21 countries, far more than in any other five-year period, had abolished the death penalty between 1989 and 1993. To some extent, this was attributable to the formation of many new States, especially after the dissolution of the former Union of Soviet Socialist Republics. It is therefore perhaps all the more remarkable that, in the seven-year period from 1994 to 2000 during which time fewer new States came into existence, 25 countries abolished capital punishment: 22 completely and 3 for ordinary crimes. Of those 25 countries, 19 had been formerly retentionist (5 of them de facto abolitionist), and 6 had moved from abolitionist for ordinary crimes to abolitionist for all crimes. Thus, at the advent of the new millennium, the gathering pace of the abolitionist movement has shown no sign of faltering.

141. Moreover, there is evidence that the abolitionist movement is becoming more widespread across the regions of the world. When Norval Morris submitted his report to the United Nations tracing developments up to 1965, he listed 26 countries and areas that were abolitionist for all offences or for offences during peacetime, plus 2 Australian states, 24 of the 29 states of Mexico, and 9 states of the United States of America.[91] At the end of 2000, there were 87 abolitionist (for all crimes and ordinary crimes) countries and territories with a similar status, not including the 13 abolitionist states of the United States. The list of abolitionist countries and territories in the above-mentioned report included only two that were outside of western Europe and Central and South America: Indonesia (which subsequently reinstated the

death penalty) and the Netherlands Antilles (part of the Netherlands). By 2000, the States that had embraced abolition had spread not only into eastern Europe, but also into Africa. Nine African countries are now completely abolitionist and another 13 are de facto abolitionist. While only two Asian States have so far completely abolished the death penalty, six are now de facto abolitionist. Among the islands of the Pacific, 11 have abolished the death penalty (10 of them for all offences) and a further 4 are de facto abolitionist.

142. Retention or non-abolition of the death penalty is currently concentrated mainly in the Middle East, North Africa and Asia. The Federal Government of the United States and 38 of its states, together with the English-speaking countries of the Caribbean, are the only jurisdictions in the Western hemisphere to retain the death penalty.

143. Yet, during the period 1994-2000, one country (the Gambia) reintroduced the death penalty (although it did not enforce it), as well as Kansas and New York State in the United States. In addition, nine countries and territories that had appeared to be moving towards abolition by refraining from carrying out executions for at least 10 years reverted to capital punishment. No countries had done this during the five-year period 1989-1993. Furthermore, four states of the United States have resumed executions since 1994 after a gap of more than a quarter of a century, the last being Tennessee in 2000, where no executions had been carried out for 40 years.

144. This is only the second of the quinquennial surveys to have included questions pertaining to safeguards guaranteeing protection of the rights of those facing the death penalty. As regards the first safeguard, the problem identified in the fifth survey still persists, namely, that capital punishment has been retained in the laws of many countries for a wide range of offences, far beyond the crime of murder. The Commission on Human Rights and the Economic and Social Council may wish to consider whether the wording of the first safeguard should be made more specific. The term "most serious crimes", defined as not going "beyond intentional crimes with lethal or extremely grave consequences", is both vague and open to a wide range of interpretations. For example, the first safeguard could be restricted to crimes that result in the death of another person as a direct consequence of a malicious and intended action of another party. As reluctant as many States appear to be to abolish capital punishment completely, there remains considerable scope for reducing the number of offences for which it is applied. States may wish to recall that it was universally affirmed by the General Assembly as long ago as 1977 that, with regard to the protection of the right to life set forth in article 3 of the Universal Declaration of Human Rights and subsequently in article 6 of the International Covenant on Civil and Political Rights, the main objective to be pursued was that of progressively restricting the number of offences for which capital punishment might be imposed, with a view to the desirability of abolishing that punishment in all countries (resolution 2857 (XXVI)).

145. The low response rate from retentionist countries precluded gauging the true extent to which the remaining eight safeguards had been complied with. It is perhaps not surprising that, when Governments are asked whether they do or do not observe a safeguard, they tick the positive response. If questions relating to the enforcement of safeguards are to be included in future quinquennial surveys, experience suggests that more probing questions relating to specific practices will need to be devised. For example, it is worth considering whether more detailed questions could be asked on police regulations and practices to ensure that interviews are conducted and evidence gathered fairly; on the availability of high-quality legal representation, including the amount of legal aid made available at all stages of the process; on procedures for the examination of the defendant's mental state; and on conditions of confinement, both pre-trial and post-conviction.

146. The paucity of responses from retentionist countries also meant that very little could be gathered about the actual number of cases in which the death penalty is inflicted and executions carried out in retentionist States throughout the world. Until there is an internationally agreed policy to communicate to the United Nations on a regular basis the full list of crimes for which the death penalty can be imposed, the changes in the law that affect that list from time to time and the number of persons sentenced to death and executed, the full scope of the death penalty and the extent of executions can never be ascertained.

147. Several States that retain the death penalty dispute the claims that the enforcement of capital

punishment is a breach of human rights per se and that application of the criminal sanction of death to some extent involves elements of a political nature. On the contrary, they maintain that it is an essential element in their armoury of punishment to ensure the control of serious crime. They also maintain that it is possible to enforce capital punishment equitably, without discrimination and with respect to legal due process and rights. It is claimed that the threat of and/or imposition of the death penalty has a deterrent effect and actually reduces the incidence of certain forms of criminality.

148. The extent to which any system of capital punishment meets those objectives and requirements should be the subject of empirical investigation, drawing upon the experience of jurisdictions where the death penalty has been abolished. It is notable therefore that, apart from the United States, very little work of this kind has been carried out by independent researchers in retentionist countries. This may be because of a lack of expertise and resources. Consideration might therefore be given, by the appropriate United Nations bodies, to the provision of the kind of technical aid and financial support that such research requires.

149. Armed with such information, States would be in a position to provide much more valuable data in response to the Secretary-General's enquiries and to satisfy themselves and the international community at large that their policies and practices are in tune with their international human rights obligations. It is clearly not satisfactory that so many retentionist States did not reply to the sixth quinquennial survey and that, with a few honourable exceptions, they have failed to reply consistently to the previous five. Some means of ensuring that the Secretary-General is furnished with more complete information from retentionist countries should be a matter for serious consideration.

Notes

[1] The safeguards were approved by the Economic and Social Council in its resolution 1984/50 and are contained in the annex to that resolution. In its resolution 1989/64, the Council recommended that Member States take specific additional steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, and, in its resolution 1996/15, called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards (see also annex II to the present report).

[2] The Centre for International Crime Prevention contracted as a consultant Roger Hood, Director of the Centre for Criminological Research at Oxford University, to advise on the preparation of the initial and revised report.

[3] However, Eritrea stated that it was unable to complete the questionnaire because the new penal code had yet to be finalized and passed through the national legislature. It did not indicate whether the new national constitution barred the use of the death penalty.

[4] Krystin Noeth, "Capital punishment", *Georgetown Law Journal*, vol. 87, No. 5 (1999), pp. 1756-1783.

[5] This does not include six small abolitionist countries and territories whose failure to reply to such a detailed questionnaire may be more understandable: Andorra, Holy See and four small island States in the Pacific. Three countries, Antigua and Barbuda, Bulgaria and Cameroon, responded to the sixth survey, the first time they had participated in one of the United Nations surveys.

[6] Azerbaijan, China, Iran (Islamic Republic of), Kenya, Lesotho, Malawi, Mali and Turkmenistan.

[7] Albania, Angola, Cambodia, Côte d'Ivoire, Guinea-Bissau, Honduras and South Africa.

[8] Bhutan, Central African Republic, Congo, Dominica, Gabon, Gambia, Grenada, Mali, Mauritania, Myanmar, Nauru, Papua New Guinea and Swaziland. Both Mali and Myanmar replied to the 1987 survey on safeguards.

[9] China (which responded to the 1987 survey on safeguards and the survey concerning the annual report submitted to the Commission on Human Rights in 1999), Democratic Republic of the Congo, Equatorial Guinea, Ghana, Iran (Islamic Republic of) (which stated in 1998 that the matter should remain within the framework of the Commission on Crime Prevention and Criminal Justice (E/CN.4/1999/52/Add.1, sect. I) but did not reply to the sixth survey), Kenya (which replied to the 1987 survey on safeguards), Lesotho (which also replied to the 1987 survey), Liberia, Libyan Arab Jamahiriya, Mongolia, Nigeria, Oman, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Somalia, Uganda, Viet Nam, Yemen and Zimbabwe.

[10] Amnesty International, *The Death Penalty Worldwide Developments in 1998* (London), May 1999 (AI Index: ACT 50/04/99).

[11] Amnesty International, *Death Penalty News* (London), September 2000 (AI Index: ACT 53/03/00).

[12] It was already a capital offence to commit such acts in the context of a foreign war.

[13] See E/CN.15/1996/19, para. 24; see also Hands Off Cain, *Towards Abolition: The Law and Politics of the Death Penalty* (Rome, November 1998), pp. 183 and 184.

[14] Amnesty International, *Death Penalty News* (London), June 2000 (AI Index: ACT 53/02/00).

[15] Council of Europe, *European Treaty Series*, No. 5.

[16] See Organization for Security and Cooperation in Europe, "The death penalty in the OSCE area: a survey, January 1998-June 1999", background paper No. 1999/1, 1999.

[17] See Organization for Security and Cooperation in Europe, "The death penalty in the OSCE area: a survey, January 1998-June 1999", background paper No. 1999/1, 1999; Council of Europe, "Compliance with member states' commitments" (AS/Inf (1992)2); and Sergiy Holovaty, "Abolishing the death penalty in Ukraine: difficulties real or imagined?", *The Death Penalty in Europe* (Council of Europe, 1999).

[18] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40*, vol. I (A/50/40); and Organization for Security and Cooperation in Europe, "The death penalty in the OSCE area: a survey, January 1998-June 1999", background paper No. 1991/1.

[19] Amnesty International, *Death Penalty News* (London, December 2001) (ACT 53/001/2001), pp. 4 and 6.

[20] Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, Djibouti, Estonia, Georgia, Italy, Lithuania, Mauritius, Nepal, Poland, Republic of Moldova, South Africa, Spain and United Kingdom.

[21] Turkmenistan, Ukraine and the newly independent East Timor in 1999 and Malta and Côte d'Ivoire in 2000.

[22] Albania and Latvia.

[23] Antigua and Barbuda (5), Bahrain (4), Belarus (183), Cameroon (7), Chile (2), Comoros (4), Estonia (13 prior to abolition), Indonesia (10), Japan (31), Lebanon (38), Morocco (77), Rwanda (114), Thailand (133), Turkey (30), and United States (1,518). Armenia, Barbados, Kazakhstan and Myanmar did not provide figures but other sources, collated by Amnesty International, suggest that at least 12 persons were sentenced to death in Armenia, 2 in Barbados, 18 in Bulgaria (prior to abolition), over 200 in Kazakhstan, approximately 12 in Lithuania (prior to abolition) and 21 in Myanmar during the period 1994-1998. Eritrea and Togo reported no death sentences and Iraq did not complete this part of the questionnaire.

[24] The Government of Kazakhstan stated that executions had taken place but was unable to provide the number since statistics were not available. Lithuania (which abolished the death penalty in 1998) stated that the last execution took place in 1995. Morocco reported no executions in 1994-1998; the last execution in Estonia before abolition in 1998 was in 1991; Bulgaria's last execution took place in 1989 before abolition in 1998. Iraq provided no information on the number of executions carried out on its territory.

[25] Reported in Amnesty International, *Children and the Death Penalty: Executions Worldwide since 1990*, December 2000 (AI Index: ACT 50/010/2000).

[26] See Amnesty International, *People's Republic of China the Death Penalty Log, 1998*, November 1999 (AI Index: AI/17/56/99).

[27] See Amnesty International, *Report 2000* (London, 2000), p. 134. Similar statements have appeared in Amnesty International, *Report 1999* (London, 1999), p. 204; Amnesty International, *Report 1998* (London, 1998), p. 204; Amnesty International, *Report 1997* (London, 1997), p. 188; and Amnesty International, *Report 1996* (London, 1996), p. 193.

[28] In 1996, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions noted the very high number of judicial executions each year in Turkmenistan in relation to its population of 4.5 million (E/CN.4/1997/60/Add.1, para. 503).

[29] The number of executions carried out in Belarus differs from that given in table 2 of the previous report on the sixth survey (E/2000/3), where it was 103. At that time, Belarus had not yet returned the questionnaire and the number had to be obtained from Amnesty International's annual reports. The fact that Amnesty International had only heard of 103 of the 168 executions carried out shows how important it is for countries to send accurate figures to the United Nations when requested to do so. There has been no annual decline in the number of executions carried out by Belarus during the quinquennium. There were 19 in 1994, 35 in 1995, 38 in 1996, 31 in 1997 and 45 in 1998.

[30] See Amnesty International, *Report 2000* (London, 2000), p. 212. The figures come from a written reply dated 12 January 2001 from the Minister for Home Affairs (Ninth Parliament of Singapore, Second Session).

[31] Amnesty International publishes figures on a regular basis showing the number of death sentences imposed throughout the world and the number of executions in the publication *Facts and Figures on the Death Penalty*. Estimates referred to here, for 1994, 1995, 1996, 1997 and 1998, were drawn from Amnesty International, *Death Sentences and Executions in 1994* (AI Index: ACT 51/01/95); *Death Sentences and Executions in 1995* (AI Index: ACT 51/01/96); *Death Sentences and Executions in 1996* (AI Index: ACT 51/01/97); *Death Sentences and Executions in 1997* (AI Index: ACT 51/01/98); *Death Sentences and Executions in 1998* (AI Index: ACT 51/01/99); and *Death Sentences and Executions in 1999* (AI Index: ACT 50/08/00).

[32] A/CONF.183/9.

[33] See Renate Wohlwend, "The efforts of the Parliamentary Assembly of the Council of Europe", *The Death Penalty: Abolition in Europe* (Council of Europe, 1999), p. 57; see also paragraph 6 of Parliamentary Assembly resolution 1097 (1996).

[34] Council of Europe, *The Death Penalty: Abolition in Europe* (Strasbourg, Council of Europe Publishing, 1999).

[35] The guidelines and other valuable documents on European Union policy on the death penalty are available at http://www.eurunion.org.

[36] For example, to the Governor of Oklahoma in January 2001 and to the Governor of Tennessee in January 2001, to the Governor of Texas on 9 August 2000 and *EU Demarche on the Death Penalty*, 25 February 2000; see http://www.eurunion.org/legislat/Death Penalty/Demarche.htm.

[37] See Hu Yunteng "On the death penalty at the turning of the century", *EU-China Human Rights Dialogue: Proceedings of the Second EU-China Legal Expert Seminar held in Beijing on 19 and 20 October 1998*, Studienreihe des Ludwig Boltzmann Instituts für Menschenrechte, Band 4, Manfred Nowak and Xin Chunying, eds. (Vienna, Verlag Österreich, 2000), pp. 88-94.

[38] See Krystin Noeth, "Capital punishment", *Georgetown Law Journal*, vol. 87, No. 5 (1999), pp. 1756-1783.

[39] Several retentionist countries, in their replies to the Commission on Human Rights at its fifty-fourth and fifty-fifth sessions, provided useful statements on the scope of, and procedures relating to, the imposition of the death penalty: Cuba, Lebanon, Philippines, Russian Federation, Turkey and United States of America in 1998 and Islamic Republic of Iran in 1999. Abolitionist Mexico in 1998 gave details of military offences still subject to the death penalty.

[40] Japan stated that the concept of "ordinary" offences and "special" offences was not clear and that in Japanese law there was no distinction between the two. It was therefore difficult to answer a question differentiating between the two concepts.

[41] For example, Uzbekistan reduced the number of capital offences from 19 to 13 in 1995, the Russian Federation reduced it from 27 to 5 in 1996 and Tajikistan reduced the number from 44 to 15 in 1998.

[42] See Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, *United Nations Position on Drug Crimes*, Resource Material No. 27 (Tokyo, 1985).

[43] Bahrain, Bangladesh, Brunei Darussalam, China, Egypt, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya (introduced in 1996), Malaysia, Myanmar, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Taiwan Province of China, Tajikistan, Thailand, United Arab Emirates, Uzbekistan and Viet Nam.

[44] Amnesty International, *Death Penalty News* (London), June 1998 (AI Index: ACT 53/03/98).

[45] Amnesty International, *Malaysia: First Executions for Four Years—A Step Backwards for Human Rights* (AI Index: ASA 28/011/2000).

[46] Amnesty International, *Death Penalty News* (London), December 1997 (AI Index: ACT 53/01/98).

[47] See also *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40*, vol. I (A/53/40), para. 119.

[48] China, Grenada, Guatemala, Pakistan, Philippines (for kidnap with torture), United Arab Emirates and Yemen.

[49] See Amnesty International, *Amnesty International Report, 1996* (London, 1996), p. 90.

[50] China, Democratic Republic of the Congo, Cuba, Ghana, Malaysia, Mali, Nigeria, Singapore, Sudan, Uganda, Viet Nam and Zambia.

[51] Cameroon, Democratic Republic of the Congo, China, Iran (Islamic Republic of), Libyan Arab Jamahiriya, Malaysia, Mali, Singapore, Sudan, Togo and Viet Nam.

[52] On the scope of the death penalty in China, see Hans-Jörg Albrecht, "The Death Penalty in China from a European perspective", *EU-China Human Rights Dialogue: Proceedings of the Second EU-China Legal Expert Seminar held in Beijing on 19 and 20 October 1998*, Studienreihe des Ludwig Boltzmann Instituts für Menschenrechte, Band 4, Manfred Nowak and Xin Chunying, eds. (Vienna, Verlag Österreich, 2000), pp. 95-118.

[53] The listing should be recognized as an inevitably incomplete catalogue of information drawn from a variety of sources at different periods of time.

[54] United States of America, "Capital punishment 1999", *Bureau of Justice Statistics Bulletin* (Washington, D.C.), December 2000.

[55] *Michael Domingues* v. *Nevada*, 528 U.S. 963 (1999).

[56] See Amnesty International, *Children and the Death Penalty: Executions Worldwide since 1990* (AI Index: ACT 50/010/2000), p. 7.

[57] Afghanistan, Burundi, Bangladesh, Democratic Republic of the Congo, India, Iran (Islamic Republic of), Iraq, Malaysia, Morocco, Myanmar, Nigeria (excepting federal law), Republic of Korea, Saudi Arabia and United Arab Emirates.

[58] An item in *Death Penalty News* (December 1999 (AI Index: ACT 53/05/99), p. 5) stated that, on 24 October 1999, the Tehran newspaper, *Kayhan*, reported that a 17-year-old male and an 18-year-old male had been hanged in the Islamic Republic of Iran for murdering a man and his 16-year-old son. In relation to the execution of a 17-year-old male in Nigeria, see E/CN.4/1998/68, paragraph 91. For the report of the execution in Pakistan of a male who at the time of the offence was 14 years of age, see Amnesty International, *Annual Report, 1998* (London, 1999), p. 269.

[59] See Victor L. Streib, "The juvenile death penalty today", at http://www.law.onu.edu/faculty/streib/juvdeath.htm; and Amnesty International, *USA: Shame in the 21st Century* (AI Index: AMR 51/189/99), and Amnesty International, *Children and the Death Penalty: Executions Worldwide since 1990* (AI Index: ACT 50/010/2000), p. 8.

[60] See Amnesty International, *Children and the Death Penalty: Executions Worldwide since 1990* (AI Index: ACT 50/010/2000), p. 6.

[61] See, for example, "Ramjattan versus Trinidad and Tobago", *The Times*, 1 April 1999, and "Campbell versus Trinidad and Tobago", *The Times*, 21 July 1999.

[62] See Death Penalty Information Center, "Mental retardation and the death penalty", http://www.deathpenaltyinfo.org/dpicmr.html.

[63] Arkansas, Colorado, Indiana, Georgia, Maryland, Kansas, Kentucky, Nebraska, New Mexico, New York (New York allows the execution of the mentally retarded only in the case of murder in prison), South Dakota, Tennessee and Washington, as well as the Federal Jurisdiction.

[64] See James L. Stephan and Tracy L. Snell, *Capital Punishment, 1994* (Washington, D.C., United States Department of Justice, 1996); see also the *Bureau of Justice Statistics Bulletin* for 1995, 1996, 1997 and 1998. The *Bulletin* for 1999 reports that 88 persons had their sentences of death overturned or removed and that appeal courts overturned the convictions of 31 death-sentenced prisoners. It should be noted that these figures related in 1999 to only 21 states that reported them.

[65] See James S. Liebman and others, *A Broken System: Error Rates in Capital Cases, 1973-1995* at http://www.law.columbia.edu/instructionalservices/liebman/.

[66] Death Penalty Information Center (2001), *Innocence and the Death Penalty*, http://www.deathpenaltyinfo.org/innoc.html.

[67] Amnesty International, "USA: increasing concern over execution of the innocent", *Death Penalty News* (London), June 2000 (AI Index: ACT 53/02/00), pp. 1 and 2.

[68] Amnesty International, *United States of America: Fatal Flaws, Innocence and the Death Penalty*, November 1998 (AI Index: AMR 51/69/98); see also D. Barry and E. Williams, "Russia's death penalty dilemmas", *Criminal Law Forum*, vol. 8, 1998, pp. 231.

[69] *United Nations Treaty Series*, Nos. 8638-8640, vol. 596, nos. 262-512.

[70] For Algeria, see E/CN.4/1995/61, paragraphs 45-48; for the Democratic Republic of the Congo, see E/CN.4/1999/39/Add.1, paragraph 66; for Egypt, see E/CN.4/1995/61, paragraphs 119 and 126, and E/CN.4/1998/68/Add.1, paragraphs 146-153; for Iraq, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40*, vol. I (A/53/40), chap. V, sect. C; for Kuwait, see E/CN.4/1995/61, paragraphs 202-205, and E/CN.4/1996/4 and Corr.1, paragraph 288; for Nigeria, see E/CN.4/1996/4 and Corr.1, paragraphs 338-353, and *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40*, vol. I (A/51/40), paragraph 42; for Pakistan, see E/CN.4/1998/68/Add.1, paragraph 303; and for Sierra Leone, see E/CN.4/1999/39/Add.1, paragraph 216.

[71] For Afghanistan, see E/CN.4/1999/39/Add.1, paragraphs 4 and 5, and E/CN.4/1998/68/Add.1, paragraphs 442-443; for China, see E/CN.4/1997/60/Add.1, paragraph 103; for Palestine, see E/CN.4/1998/68/Add.1, paragraph 438; for Rwanda, see E/CN.4/1998/68/Add.1, paragraph 354, and E/CN.4/1999/39/Add.1, paragraph 205; for Saudi Arabia, see E/CN.4/1999/39/Add.1, paragraph 212; and for Yemen, see E/CN.4/1998/68/Add.1, paragraph 442.

[72] See Roger Hood, *The Death Penalty: A World-wide Perspective* (Oxford University Press, 1990), pp. 107-111.

[73] For the Central African Republic, see E/CN.4/1995/61, paragraph 86; in relation to the Islamic Republic of Iran, Nigeria and Sierra Leone, see the sources cited in note 58 above.

[74] See Hans Jörg Albrecht "The death penalty in China from a European perspective", *EU-China Human Rights Dialogue: Proceedings of the Second EU-China Legal Expert Seminar held in Beijing on 19 and 20 October 1998*, Studienreihe des Ludwig Boltzmann Instituts für Menschenrechte, Band 4, Manfred Nowak and Xin Chunying, eds. (Vienna, Verlag Österreich, 2000), pp. 95-118.

[75] See National Coalition to Abolish the Death Penalty, "Death penalty profile (1999 wrap-up)", at http://www.ncadp.org/stats.html

[76] See Death Penalty Information Center, *Facts about Clemency*, at http://www.deathpenaltyinfo.org/clemency.html

[77] See Amnesty International, *Killing without Mercy: Clemency Procedures in Texas* (London), June 1999 (AI Index: AMR 51/85/99), p. 6.

[78] Amnesty International, "News in brief", *Death Penalty News* (London), June 1998 (AI Index: ACT 53/03/98), p. 4.

[79] [2000] 3 WLR 1785.

[80] Trinidad and Tobago, Ministry of Foreign Affairs, *Instrument of Accession to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation Excluding the Competence of the Human Rights Committee to Receive and Consider Communications in Relation to the Imposition of the Death Penalty*.

[81] Despite the fact that Trinidad and Tobago had withdrawn its accession to the Inter-American Convention on Human Rights, the appellant had access to the Inter-American Commission on Human Rights by virtue of the membership of Trinidad and Tobago in OAS.

[82] In Alabama, Florida, Georgia and Nebraska, electrocution is the sole method. In several other states, electrocution (7), lethal gas (4), hanging (3) and firing squad (3) are permissible in certain circumstances, usually for prisoners who chose one of these methods of execution and who were sentenced to death before the change to lethal injection was introduced. See United States of America, "Capital punishment, 1999", *Bureau of Justice Statistics Bulletin* (Washington, D.C.), December 2000.

[83] For further information, see www.wma.net/e/policy/20-6-81_e.html

[84] Afghanistan, Chechnya (*Shar'ia* courts), China, Democratic People's Republic of Korea, Democratic Republic of the Congo, Equatorial Guinea, Guatemala, Iran (Islamic Republic of), Nigeria, Saudi Arabia and Viet Nam.

[85] See Amnesty International, *People's Republic of China: the Death Penalty in 1998*, December 1999 (AI Index: ASA 17/57/99), pp. 4 and 5.

[86] United States of America, Department of Justice, *Capital Punishment* (published annually).

[87] *Chambers* v. *Bowersox*, 157 F. 3d 560, at p. 570 (8th Cir. 1998).

[88] Storme, "De onverminderde actualiteitswaarde von de discussie over de doodstrat" (The undiminished topicality of discussions on the death penalty), *Panopticon*, 1995, p. 365.

[89] J. Zlobec, ed., *Smrtna kazen* (The death penalty) (Ljubljana, 1989).

[90] See, for example, "How the death penalty works: empirical studies of the modern capital sentencing system", *Cornell Law Review*, vol. 38, No. 6 (September 1998).

[91] United Nations, Department of Economic and Social Affairs, *Capital Punishment: Developments 1961-1965*, 1967.

Annex I

Supplementary data and tables

Table 1
Status of capital punishment in December 2000: countries and areas that were retentionist[a]

Afghanistan	Iran (Islamic Republic of)	Saint Lucia
Algeria	Iraq	Saint Vincent and the Grenadines
Bahamas	Japan	Saudi Arabia
Bahrain	Jordan	Sierra Leone
Bangladesh	Kazakhstan	Singapore
Belarus	Kenya	Somalia
Botswana	Kuwait	Sudan
Burundi	Kyrgyzstan	Syrian Arab Republic
Cameroon	Lebanon	Taiwan Province of China
Chad	Lesotho	Tajikistan
China	Liberia	Thailand
Comoros	Libyan Arab Jamahiriya	Trinidad and Tobago
Cuba	Malawi	Tunisia
Democratic People's Republic of Korea	Malaysia	Uganda
Democratic Republic of the Congo	Mongolia	United Arab Emirates
Egypt	Morocco	United Republic of Tanzania
Equatorial Guinea	Nigeria	United States of America
Ethiopia	Oman	Uzbekistan
Ghana	Pakistan	Viet Nam
Guatemala	Palestine	Yemen
Guyana	Philippines	Zambia
India	Qatar	Zimbabwe
Indonesia	Republic of Korea	
	Russian Federation	
	Rwanda	
	Saint Kitts and Nevis	

[a] The 71 countries and areas listed retain the death penalty for ordinary crimes. Most of them are known to have carried out executions during the past 10 years. In some cases, however, it is difficult to ascertain whether or not executions have in fact been carried out.

Table 2
Status of capital punishment in December 2000: countries and areas that are completely abolitionist[a]

Country or area	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*
Andorra	1990		1943
Angola	1992		..
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998		1993
Belgium	1996		1950
Bolivia	1995/1997[b]		1974
Bulgaria	1998		1989
Cambodia	1989		..
Canada	1998	1976	1962
Cape Verde	1981		1835
Colombia	1910		1909
Costa Rica	1877		..
Côte d'Ivoire	2000		1960
Croatia	1990		1987
Czech Republic	1990		..
Denmark	1978	1933	1950
Djibouti	1995		1977[c]
Dominican Republic	1966		..
East Timor	1999		1999[c]
Ecuador	1906		..
Estonia	1998		1991
Finland	1972	1949	1944
France	1981		1977
Georgia	1997		1994
Germany	1987		..
Greece	1994	1993	1972
Guinea-Bissau	1993		1986
Haiti	1987		1972
Holy See	1969		..
Honduras	1956		1940
Hungary	1990		1988
Iceland	1928		1830
Ireland	1990		1954
Italy	1994	1947	1947
Kiribati	1979		1979[c]
Liechtenstein	1987		1785
Lithuania	1998		1995
Luxembourg	1979		1949
Malta	2000	1971	1943
Marshall Islands	1986		1986[c]
Mauritius	1995		1987

Country or area	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*
Micronesia (Federated States of)	1986		1986[c]
Monaco	1962		1847
Mozambique	1990		1986
Namibia	1990		1988
Nepal	1997	1990	1979
Netherlands	1982	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979		1930
Norway	1979	1905	1948
Palau	1994		1994[c]
Panama	..		1903
Paraguay	1992		1928
Poland	1997		1988
Portugal	1976	1867	1849
Republic of Moldova	1995		1989
Romania	1989		1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990		1975[c]
Seychelles	1993		1976[c]
Slovakia	1990		..
Slovenia	1989		1957
Solomon Islands	1978	1966	1966[d]
South Africa	1997	1995	1991
Spain	1995	1978	1975
Sweden	1972	1921	1910
Switzerland	1992	1942	1944
The former Yugoslav Republic of Macedonia	1991		..
Turkmenistan	1999		1997
Tuvalu	1976		1976[c]
Ukraine	1999		1997
United Kingdom of Great Britain and Northern Ireland	1998	1965	1964
(Northern Ireland	1998	1973	..)
Uruguay	1907		..
Vanuatu	1980		1980[e]
Venezuela	1863		..

[a] Total: 76.

[b] See the explanation in paragraph 35 of the main report.

[c] Date of independence. No executions have taken place since that time. The date of the last execution prior to independence is not available.

[d] Before that year.

[e] Date of independence.

Table 3
Status of capital punishment in December 2000: countries that are abolitionist for ordinary crimes only[a]

Country	*Date of abolition for ordinary crimes*	*Date of last execution*
Albania	2000	1995
Argentina	1984	1916
Bosnia and Herzegovina	1997	..
Brazil	1979 (1882)[b]	1855
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1999	1964
Israel	1954	1962
Latvia	1999	1996
Mexico	..	1930
Peru	1979	1979

[a] Total: 11.

[b] The death penalty was abolished in Brazil in 1882 but reintroduced in 1969 for political crimes only until 1979, when the death penalty was again abolished.

Table 4

Status of capital punishment in December 2000: countries and areas that can be considered de facto abolitionist[a]

Country or territory	*Date of last execution*
Antigua and Barbuda	1989
Armenia[b]	1991
Barbados	1984
Belize	1986
Benin	1989
Bhutan	1964
Brunei Darussalam	1957
Burkina Faso	1989
Central African Republic	..
Chile	1985
Congo	1982
Dominica	1986
Eritrea[c]	1989
Gabon	1989
Gambia	1981
Grenada	1978
Guinea	1984
Jamaica	1988
Lao People's Democratic Republic	1989
Madagascar	1958
Maldives	1952
Mali	1980
Mauritania	1989
Myanmar	1989
Nauru	1968[d]
Niger	1976
Papua New Guinea	1950
Samoa	1962
Senegal	1967
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Togo	1979
Tonga	1982
Turkey	1984
Yugoslavia	1989

a Total: 36.

b Although the last execution took place in 1991, in its response to the questionnaire, Armenia classified itself as de facto abolitionist on the grounds that a bill to abolish the death penalty was before Parliament in 1999. However, by the end of 2000 the bill had still not been passed, although Armenia did sign (but not ratify) Protocol No. 6 to the European Convention on Human Rights and Fundamental Freedoms in January 2001.

c Eritrea became independent in 1993.

d Date of independence. No executions have taken place since that time. The date of the last execution prior to independence is not available.

Table 5
Countries and areas that have abolished capital punishment since 1985[a]

Country or area (in chronological order)	*Year*	*Offences for which capital punishment was abolished*	
		All offences	*Ordinary offences*
Australia	1985	x	
Germany	1987	x	
Haiti	1987	x	
Liechtenstein	1987	x	
Cambodia	1989	x	
New Zealand	1989	x	
Romania	1989	x	
Slovenia	1989	x	
Andorra	1990	x	
Czech Republic	1990	x	
Hungary	1990	x	
Ireland	1990	x	
Mozambique	1990	x	
Namibia	1990	x	
Sao Tome and Principe	1990	x	
Slovakia	1990	x	
Croatia	1990	x	
The former Yugoslav Republic of Macedonia	1991	x	
Angola	1992	x	
Paraguay	1992	x	
Switzerland	1992	x	
Guinea-Bissau	1993	x	
Seychelles	1993	x	
Greece	1994	x	
Italy	1994	x	
Djibouti	1995	x	
Mauritius	1995	x	
Belgium	1996	x	
Bolivia	1995/1997	x	
Bosnia and Herzegovina	1997		x
Georgia	1997	x	
Nepal	1997	x	
Poland	1997	x	
South Africa	1997	x	
Azerbaijan	1998	x	
Bulgaria	1998	x	
Canada	1998	x	
Estonia	1998	x	
Lithuania	1998	x	
United Kingdom of Great Britain and Northern Ireland	1998	x	

Country or area (in chronological order)	*Year*	*Offences for which capital punishment was abolished*	
		All offences	*Ordinary offences*
East Timor	1999	x	
Latvia	1999		x
Turkmenistan	1999	x	
Ukraine	1999	x	
Malta	2000	x	
Côte d'Ivoire	2000	x	

[a] Total: 46

Table 6

Countries that have signed or ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Second Optional Protocol to the International Covenant on Civil and Political Rights and/or the Protocol to the American Convention on Human Rights

Country (by region)	*Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*		*Second Optional Protocol to the International Covenant on Civil and Political Rights*		*Protocol to the American Convention on Human Rights*	
	Signed	*Ratified*	*Signed*	*Ratified*	*Signed*	*Ratified*
Africa						
Cape Verde				a (2000)		
Guinea-Bissau			a (2000)			
Mozambique				a (1993)		
Namibia				a (1994)		
Sao Tome and Principe			a (2000)			
Asia						
Australia				a (1990)		
Nepal				a (1998)		
New Zealand			a (1990)	a (1990)		
Seychelles				a (1994)		
Eastern Europe						
Albania	a (2000)	a (2000)				
Armenia	a (2001)					
Azerbaijan				a (1999)		
Bosnia and Herzegovina			a (1999)			
Bulgaria	a (1999)	a (1999)	a (1999)	a (1999)		
Croatia	a (1996)	a (1997)		a (1995)		
Czech Republic	a (1991)	a (1992)				
Estonia	a (1993)	a (1998)				
Georgia	a (1999)	a (2000)		a (1999)		
Hungary	a (1990)	a (1992)		a (1994)		
Latvia	a (1998)	a (1999)				
Lithuania	a (1999)	a (1999)	a (2000)			
Poland	a (1999)	a (2000)	a (2000)			
Republic of Moldova	a (1996)	a (1997)				
Romania	a (1993)	a (1994)	a (1990)	a (1991)		
Russian Federation	a (1997)					
Slovakia	a (1991)	a (1992)	a (1998)	a (1999)		
Slovenia	a (1993)	a (1994)	a (1993)	a (1994)		
The former Yugoslav Republic of Macedonia	a (1996)	a (1997)		a (1995)		
Turkmenistan				a (2000)		

Country (by region)	Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms		Second Optional Protocol to the International Covenant on Civil and Political Rights		Protocol to the American Convention on Human Rights	
	Signed	Ratified	Signed	Ratified	Signed	Ratified
Ukraine	a (1997)	a (2000)				
Latin America and the Caribbean						
Brazil					a (1994)	a (1996)
Colombia				a (1997)		
Costa Rica			a (1990)	a (1998)	a (1991)	a (1998)
Ecuador				a (1993)	a (1990)	a (1998)
Honduras			a (1990)			
Nicaragua			a (1990)		a (1990)	a (1999)
Panama				a (1993)	a (1990)	a (1991)
Paraguay					a (1999)	
Uruguay			a (1990)	a (1993)	a (1990)	a (1994)
Venezuela			a (1990)	a (1993)	a (1990)	a (1993)
Western Europe						
Andorra	a (1996)	a (1996)				
Austria	a (1983)	a (1984)	a (1991)	a (1993)		
Belgium	a (1983)	a (1998)	a (1990)	a (1998)		
Cyprus	a (1999)	a (2000)		a (1999)		
Denmark	a (1983)	a (1983)	a (1990)	a (1994)		
Finland	a (1989)	a (1990)	a (1990)	a (1991)		
France	a (1983)	a (1986)				
Germany	a (1983)	a (1989)	a (1990)	a (1992)		
Greece	a (1983)	a (1998)		a (1997)		
Iceland	a (1985)	a (1987)	a (1991)	a (1991)		
Ireland	a (1994)	a (1994)		a (1993)		
Italy	a (1983)	a (1988)	a (1990)	a (1995)		
Liechtenstein	a (1990)	a (1990)		a (1998)		
Luxembourg	a (1983)	a (1985)	a (1990)	a (1992)		
Malta	a (1991)	a (1991)		a (1994)		
Monaco				a (2000)		
Netherlands	a (1983)	a (1986)	a (1990)	a (1991)		
Norway	a (1983)	a (1988)	a (1990)	a (1991)		
Portugal	a (1983)	a (1986)	a (1990)	a (1990)		
San Marino	a (1989)	a (1989)				
Spain	a (1983)	a (1985)	a (1990)	a (1991)[a]		
Sweden	a (1983)	a (1984)	a (1990)	a (1990)		
Switzerland	a (1983)	a (1987)		a (1994)		
United Kingdom of Great Britain and Northern Ireland	a (1999)	a (1999)	a (1999)	a (1999)		

[a] Withdrew its reservation in 1997.

Annex II

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. The safeguards guaranteeing protection of the rights of those facing the death penalty, as contained in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, are as follows:

"1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

"2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

"3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

"4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

"5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights,[a] including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

"6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

"7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

"8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

"9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

2. Further to the above-mentioned safeguards, in its resolution 1989/64 of 24 May 1989, the Council recommended that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

3. Further, in its resolution 1996/15 of 23 July 1996, the Council:

(a) Noted that, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries had abolished the death penalty and others had followed a policy reducing the number of capital offences, and had declared that they had not sentenced any offender to that penalty, while still others had retained it and a few had reintroduced it;

(b) Called upon Member States in which the death penalty had not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it was stated that capital punishment might be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

(c) Encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary,[b] the Basic Principles on the Role of Lawyers,[c] the Guidelines on the Role of Prosecutors,[d] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[e] and the Standard Minimum Rules for the Treatment of Prisoners;[f]

(d) Also encouraged Member States in which the death penalty had not been abolished to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;

(e) Called upon Member States in which the death penalty might be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

(f) Also called upon Member States in which the death penalty might be carried out to ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question;

(g) Urged Member States in which the death penalty might be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

Notes

[a] Economic and Social Council resolution 1982/29, para. 1.

[b] *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

[c] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex).

[d] Ibid., sect. C.26.

[e] General Assembly resolution 43/173, annex.

[f] Economic and Social Council resolution 663 (XXIV), annex.